



City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

April 9, 2013

From: Charles E. Rigney, Sr., Acting Director
Department of Development

Subject: An Ordinance approving the Master Development Agreement and authorizing the expenditures for the development of a Hotel, Conference Center and Parking Garage.

Reviewed: Darrell V. Hill, Assistant City Manager

Ward/Superward: 2/6

Approved:

Sabrina D. Jones
for Marcus D. Jones, City Manager

Item Number:

PH-1

I. **Recommendation:** Conduct Public Hearing and Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description**

This agenda item is an Ordinance to authorize the City's participation in a public/private partnership to develop a Hotel (Developer), Conference Center (City) and Parking Garage (City) in downtown at the site located between E. Main Street, E. Plume Street and a portion of Granby Street that has been contemplated for the better part of the past decade.

IV. **Analysis**

The City has pursued the development of a luxury hotel and conference center project with a vision towards creating a "focused" conference center that would enhance the City's ability to attract small and medium-sized conferences and executive meetings. Norfolk is well known as the cultural hub of the region that benefits from a wide variety of arts and cultural destinations, local and national retail and restaurants, as well as serving as the employment hub of Hampton Roads. Market research has indicated that Norfolk is an attractive destination and would enjoy a competitive advantage from small to medium-sized conferences and group meetings, rather than the larger convention type meetings that are the target of other products in the region. Building upon Norfolk's central location in Hampton Roads, the development of a luxury hotel and conference center, including expanded parking capacity, will assist in diversifying our economy by increasing our penetration into the tourism and hospitality industry. The creation of this hotel and conference center will serve as a vital component to improve cross-marketing and collaboration, enhancing Norfolk's identity as a destination of choice for business and

leisure. This would complement the best that Norfolk has to offer with our restaurants, retail and cultural/entertainment assets already in place, including the soon to be repositioned Waterside Festival Marketplace. The addition of a new luxury hotel and conference center will greatly increase Norfolk's competitive advantages as the place to live, work, play and visit.

The project consists of the following components:

Hotel: (Developer)	Approximately 300-room full service hotel with a high end restaurant.
Conference Center: (City)	Approximately 50,000 square feet of ballroom and meeting space that is designed to achieve the International Association of Conference Centers (IACC) designation.
Garage: (City)	Approximately 600-space parking structure.

V. Financial Impact

In 2003, the City created the Public Amenities Fund and increased the meals and lodging tax by one percent (1.0%) as an ongoing funding source for tourism related projects, including this project. From FY2003 through and including FY2012, the Public Amenities Fund has earned \$50.7 million. The FY2013 projected deposit into the Public Amenities Fund is \$5.5 million, which would bring the total deposited into the Public Amenities Fund to \$56.2 million. Of the projected total deposits into the Public Amenities Fund, \$29.1 million has been dedicated to this project. To date, \$9.45 million has been spent on this project; resulting in a balance available for this project of \$19.7 million from the Public Amenities Fund. The other \$27.1 million deposited in the Public Amenities Fund over the past decade has been used to make improvements at other public facilities including the Scope, as well as grants distributed to various organizations that support increasing tourism opportunities across the City such as the Norfolk Consortium.

Starting in 2005, the City began authorizing funds for this project in its annual Capital Improvements Program Budget. As indicated in the attached Ordinance, prior City Councils have authorized sufficient funding for this hotel, conference center and parking garage project. A summary is provided below.

	<u>Estimated Costs</u>	<u>Council Authorization Received</u>	<u>Total Funding Authorized *</u>	<u>Expenditures</u>	<u>Funding Remaining</u>
Hotel Grant:	\$7,500,000	FY2007	\$7,500,000	\$0	\$7,500,000
Conference Center:	42,500,000	FY2005 - FY2008	58,945,000	(12,508,645)	46,436,355
Garage:	<u>19,500,000</u>	FY2005 & FY2006	<u>22,000,000</u>	<u>(3,563,816)</u>	<u>18,436,184</u>
	<u>\$69,500,000</u>		<u>\$88,445,000</u>	<u>(\$16,072,461)</u>	<u>\$72,372,539</u>

* Includes \$14.4 million from the balances available in the Public Amenities Fund.

The project consists of the following estimated costs for each investment:

Hotel:	\$64 million (<i>Developer</i>)
Hotel Tourism Development Grant Estimate:	\$200,000 (<i>State 1%</i>)
(<i>State, City & Developer: for debt service only</i>)	\$200,000 (<i>City 1%</i>)
	\$200,000 (<i>Developer 1%</i>)
Hotel Grant to Reduce Hard Construction Costs:	\$7,500,000 (<i>City</i>)
Shared Hotel Hard Construction Costs:	\$2,500,000 (<i>City</i>)
Restaurant Performance Based Grant:	\$750,000 (<i>City</i>)
(<i>10 year maximum benefit based on revenues generated by restaurant</i>)	
Conference Center:	\$42.5 million (<i>City</i>)
Parking Garage:	\$19.5 million (<i>City</i>)

The one percent of the meals and lodging tax deposited into the Public Amenities Fund each year is approximately \$5.5 million. The annual debt service for the City's conference center is estimated to be \$4 million. The debt service for the City's parking garage component of this project will be paid from the user-generated revenues of the City's self-supporting Parking Enterprise.

In conclusion, there is existing authorization and monies available in and from the Public Amenities Fund to pay for the City's obligations related to this project without any additional tax payer contributions. In addition, the analysis above is conservative in that the City's estimates do not include indirect revenues generated from this project.

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia State law, a legal notice was posted in *The Virginian-Pilot*. In addition, public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Development; the Office of Budget & Grants Management; the Department of Finance and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Master Development Agreement

4/5/13 ts

Form and Correctness Approval:

By *PM*
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By *Paul V. Hill*
DEPT.

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund form which it is drawn and not appropriated for any other purpose.

\$ 8,172,954 2250-3600

Alan M. Kelly
Director of Finance

Account
4/5/13
Date

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE MASTER DEVELOPMENT AGREEMENT TO BE ENTERED INTO WITH PROFESSIONAL HOSPITALITY RESOURCES, INC. ("PHR") AND THE NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY ("NRHA") FOR THE DEVELOPMENT OF A HOTEL, A CONFERENCE CENTER AND A PARKING GARAGE, AUTHORIZING THE COOPERATION AGREEMENT TO BE ENTERED INTO WITH NRHA RELATING TO THIS DEVELOPMENT, AUTHORIZING THE CREATION OF A TOURISM ZONE PURSUANT TO VIRGINIA CODE SECTION 58.1-3851, AUTHORIZING AND APPROPRIATING THE ENTITLEMENT TO AN AMOUNT EQUAL TO THE BUT FOR REVENUES GENERATED BY A ONE PERCENT STATE SALES AND USE TAX ON TRANSACTIONS TAKING PLACE ON THE HOTEL PREMISES IN ACCORDANCE WITH VIRGINIA CODE SECTION 58.1-3851.1, AND 2 1/2 % STATE SALES AND USE TAX FROM TRANSACTIONS TAKING PLACE ON THE PREMISES OF THE CONFERENCE CENTER IN ACCORDANCE WITH VIRGINIA CODE SECTION 58.1-608.3, AUTHORIZING THE CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THE MASTER DEVELOPMENT AGREEMENT TO NRHA, APPROPRIATING AND AUTHORIZING THE EXPENDITURE FOR THE CITY'S OBLIGATIONS UNDER THE AGREEMENTS AND AUTHORIZING THE CITY MANAGER TO ENTER INTO SUCH OTHER AGREEMENTS AND TAKE SUCH OTHER ACTIONS AS ARE NECESSARY TO IMPLEMENT THIS ORDINANCE AND PROJECT.

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the City Manager is hereby authorized to negotiate and execute an agreement with PHR and NRHA, substantially in the same form and terms as in the agreement attached as Exhibit A, including the Operating and Parking Agreements, satisfactory to the City Attorney and consistent with this ordinance.

Section 2:- That the City Manager is hereby authorized to negotiate and execute a Cooperation Agreement with NRHA, substantially in the same form and terms as in the agreement

attached as Exhibit B, satisfactory to the City Attorney and consistent with this ordinance.

Section 3:- That the conveyance, condominiumization and any reconveyance of the property that is the subject of the Master Development Agreement to the NRHA is hereby approved.

Section 4:- That the funding for the City's obligations under the Master Development Agreement and Cooperation Agreement is hereby appropriated and authorized for expenditure, including: (1) heretofore funding has been appropriated in prior ordinances numbered 41,409; 41,557; 41,840; 42,278 and 42,663 for a Conference Center, Parking Garage and the Hotel Grant. These previous appropriations are hereby ratified and authorized for this Master development Agreement and cooperation Agreement; (2) amounts equal to 1% of the sales and use tax generated from the Hotel and 2 ½% generated from the Conference Center; (3) \$7,500,000 of cash funding previously authorized by ordinance no. 42,663 for Conference center funding is converted to bond funding and is hereby appropriated for the purpose of partially funding the Conference Center; (4) \$7,500,000 of bond funding previously authorized by ordinance no. 42,593 for the Hotel grant is converted to cash funding from the Public Amenities Fund Balance and is hereby appropriated for the purpose of providing the Hotel grant; (5) \$8,172,954 from the Public Amenities Fund Balance is hereby appropriated for the purpose of these agreements and shall not revert to the Public Amenities fund Balance, but shall be carried on the books of the City Controller and be available for expenditure on the Conference Center project. Any unexpended balances appropriated in the Public Amenities Fund at the close of business on June 30, 2013 shall not revert to the Public Amenities Fund Balance, but shall be carried on the books of the City Controller and be available for expenditure on the conference center project.

Section 5:- That the City Manager shall take such steps as necessary to implement this ordinance including but not limited to the creation of a Tourism Zone pursuant to Virginia Code section 58.1-3851, including the steps necessary to support Developer's entitlement to an amount equal to the revenues generated by a one percent state sales and use tax on transactions taking place on the Hotel premises. That amount is hereby appropriated subject to the terms and conditions of Virginia Code section 58.1-3851.1.

Section 6:- That this ordinance shall be in effect from and after the date of its adoption.

MASTER DEVELOPMENT AGREEMENT

542 THIS MASTER DEVELOPMENT AGREEMENT ("Agreement"), is made this day of April, 2013, by and among the **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia ("Authority"), the **CITY OF NORFOLK** ("City"), a municipal corporation of the Commonwealth of Virginia, and **PROFESSIONAL HOSPITALITY RESOURCES, INC.** ("Developer"), any of them individually, a "Party," or, collectively, the "Parties".

RECITALS:

A. Under the leadership of the City Council, City has embarked on a plan to revitalize downtown Norfolk in order to attract tourists, vacationers, conventioners and other visitors to City, and Authority is empowered under the Virginia Housing Authorities Law, Chapter 1, Title 36 of the Code of Virginia of 1950, as amended ("Act") to cooperate with the City in actions taken in connection with and for the purpose of redeveloping an area of downtown Norfolk.

B. Both City and Authority desire to broaden and modernize City's convention serving potential through the joint development of a new hotel by a private developer and the development of a conference center and garage within the boundaries of the Downtown North Redevelopment Project Area on the real property owned or to be owned by Authority and further described in Exhibit "A".

C. Negotiations with Developer have produced an agreement by Developer to arrange for the construction, furnishing and equipping of the "Hotel" (defined below), the "Garage," (defined below) and the "Conference Center" (defined below) (together, the "Project"), and to provide design, development consulting advice and assistance to the City and Authority to assure that the Conference Center is designed, constructed, furnished and equipped according to standards of quality substantially similar to the Hotel. The Hotel, Conference Center and Garage will be connected internally as is necessary for their proper operation.

D. The Conference Center, Garage and the Hotel are to be simultaneously constructed, furnished and equipped as provided in this Agreement.

E. Developer will either itself or through its Hotel operator operate the Conference Center for City in accordance with the terms and conditions of a certain Operating Agreement.

F. In order to address the fact that the Hotel, Garage and the Conference Center, though separately owned, will be physically joined, thereby creating, the need for certain access, utility, structural support and other easements and creating the need for a mechanism for fairly allocating costs associated with operating, maintaining, repairing or replacing any portion thereof, the Authority and Developer shall create the Condominium by the preparation, execution and, upon substantial completion of the Project, recordation of certain Condominium Instruments. Following the creation of the Condominium, the Authority and Developer shall convey the Developer's Unit to Developer and the City's Unit to the City.

G. In accordance with its authority to assist redevelopment, the Authority shall provide certain grants to Developer. To evidence the terms and conditions of such grants, Authority and Developer shall execute a certain Grant Agreement. The City and Authority shall enter into a Cooperation Agreement relating to the City's funding of the Authority's obligations hereunder.

H. In order to provide adequate parking for guests of the Hotel and Conference Center, Authority and Developer shall execute a certain Garage Parking Agreement.

I. In order to induce lenders to provide construction and permanent financing for the Hotel, City and Authority shall execute a certain Mortgagee Protection Agreement and such additional documents as may be reasonably necessary to secure such financing.

J. City intends to issue municipal bonds in order to raise funds for the purpose of constructing, furnishing and equipping the Garage and Conference Center and is providing funds to Authority to enable it to carry out its public purpose including the performance of Authority's obligations to Developer set out in those Agreements referred to herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1. Definition of Terms. When used in this Agreement with an initial capital letter or letters, each of the following terms shall have the meaning given it below.

"Act" means the Virginia Condominium Act, § 55-79.39 *et seq.* of the Code of Virginia, 1950, as amended.

"Affiliated Entity" for the purpose of Article II means an entity in which Professional Hospitality Resources, Inc. and/or Bruce L. Thompson have in the aggregate at least fifty-one percent (51%) of the ownership, whether directly or indirectly.

"Agreement" means this Master Development Agreement between Authority, City and Developer.

"Air Rights" means (i) the exclusive right to possess and use the Air Space for the construction, ownership, occupancy, operation, maintenance, repair and replacement of the Hotel, (ii) co-ownership of and non-exclusive right to use, possess, occupy, operate, maintain, repair and replace those additional portions of the Building intended to be designated as Common Elements in the Condominium Instruments, and (iii) such other easements and rights as are necessary for the construction, possession, use, operation, maintenance, repair and replacement of the Hotel and the portions of the Building intended to be designated as Common Elements in the Condominium Instruments, including an easement for subjacent support by the



Garage and/or the Conference Center and the right to penetrate the Property for the construction, maintenance, repair and replacement of the structural portions of the Building.

"Air Space" means the air space above the Property which is within the footprint of the Building and which constitutes the Hotel.

"Arbitration" means the dispute resolution mechanism described in Section 13 of this Agreement.

"Architect" means the architect selected by the Developer and City pursuant to Sections 4.2.1(a)(ii) and 4.3 of this Agreement.

"Authority or City Delay" means any delay in completion of construction, furnishing or equipping of the Project or any component thereof resulting from (i) any act or delay of Authority or City, their respective employees or agents, (ii) the failure by Authority or City to perform timely any of its obligations under this Agreement, or (iii) any change to the Public Facilities or Related Improvements as shown in the Final Plans and Specifications pursuant to Section 7.4 below (a "City Change Order"). In order to avoid any dispute regarding the occurrence or duration of any Authority or City Delay, the foregoing delays (other than a delay resulting from a City Change Order) shall only be considered an "Authority or City Delay" for purposes of the Agreement if Developer notifies the Authority or City, as applicable, in writing of the occurrence of any such delay claimed by Developer within ten (10) business days after the later of (x) the commencement thereof or (y) the date upon which Developer becomes aware of such delay and then subsequently notifies the Authority or the City, as applicable, in writing of the length of any such delay claimed by Developer within ten (10) business days after the cessation thereof.

"Base Program" means the development program described on Exhibit "D" hereto.

"Building" means the Garage, Conference Center and Hotel, and all other associated improvements to be constructed on, over or below the Property.

"City Change Order" has the meaning ascribed to it in Section 7.4.

"City's Unit" means the condominium unit in the Condominium consisting of the land component of the Property, the Garage, the Conference Center and an undivided interest in the Common Elements.

"Closing" means the date upon which the Authority or City convey the Hotel Site to Developer.

"Common Elements" means all portions of the Condominium other than the Units, as more particularly described in Section 16.3.

"Completed" means, with respect to the Conference Center and Garage, when the Architect of the Conference Center and Garage certifies in writing to Authority that the



construction of the Conference Center and Garage are sufficiently completed in accordance with the Final Plans and Specifications to permit use of the Conference Center for the purposes for which it was intended, which date may precede the full completion of all punch-list items, landscaping and similar design and development functions. The agreement with the Architect shall include a provision requiring the Architect to evaluate completion and when appropriate certify its completion.

"Condominium" means the condominium to be created by the submission of all of the Property and the Building to the provisions of the Act.

"Condominium Instruments" means the declaration, bylaws, plat and plans for the Condominium and any other documents deemed to be condominium instruments by the Act.

"Conference Center" means the conference center that is to be constructed, furnished and equipped in accordance with the terms of this Agreement.

"Construction Documents Phase" shall commence following the end of the Pre-Development Phase and expire as provided pursuant to Section 4.2.2 of this Agreement.

"Construction Phase" means the period of time between the Closing and date on which the Project is Completed.

"Construction Schedule" has the meaning ascribed to it in Section 2.5.

"Contractors" means the general contractor and subcontractors for construction of the Conference Center and Garage.

"Cost Contribution" has the meaning ascribed to it in Section 5.12.

"Cost Increase Notice" has the meaning ascribed to it in Section 8.8.

"Deed" shall mean the special warranty deed pursuant to which the Authority shall convey the Air Rights to Developer.

"Developer" means Professional Hospitality Resources, Inc., or any Affiliated Entity to which this Agreement is assigned (and which Affiliated Entity assumes all obligations of Developer under this Agreement) pursuant to Article 12.

"Developer's Financing Commitment" means a commitment or commitments reasonably satisfactory to the City and Authority, which has or have been accepted by Developer from one or more institutional lenders, to finance the cost of the design, construction, and equipping of the Hotel in excess of the sum of (a) the Developer's equity investment, and (b) the amounts to be provided to Developer by the City or the Authority towards such cost pursuant to this Agreement. In order to constitute a Developer's Financing Commitment under this definition, a commitment must be duly authorized by the issuer, and must be in substantially the form and level of detail typically utilized by the prospective lender in similar transactions, including requirements for closing and conditions thereof; and setting forth the proposed



principal amount, interest rate, amortization terms, collateral or guaranty requirements, maturity date, and the expiration date of the commitment.

"Developer's Unit" consists of the Air Space, the Hotel and any other portions of the Building (or rights with respect thereto) which are to be included therein as provided by the terms of this Agreement (including an undivided interest in the Common Elements).

"Development Budget" means a budget for development of the Public Facilities and the Hotel, prepared and approved pursuant to paragraph (a) of Subsection 4.2.1 or as modified pursuant to paragraph (b) of Subsection 4.2.4. With respect to the cost of any facilities shared by the Public Facilities and the Hotel, such costs shall be allocated in the Development Budget in accordance with the following equitable basis (the "Expense Allocation"):

(i) Where the proportional benefits to the Public Facilities and the Hotel of such facilities can be reasonably determined by the Architect, subject to the approval of Developer and City, then the expenses shall be allocated to the Conference Center, Garage and the Hotel in proportion to the respective benefits to each as determined by the Architect; and

(ii) Where the proportional benefits to the Public Facilities and the Hotel of such facilities cannot be reasonably determined by the Architect, or Developer and City cannot after good faith efforts agree on the proportionate benefits, then the costs shall be allocated based on a formula to be specified prior to the end of the Pre-Development Phase. The Parties agree, however, that upon submission of the Development Budget by Developer to City, they shall negotiate in good faith on a line item basis to identify the proportional benefits of such facilities.

(iii) The costs of any required environmental remediation identified in the Pre-Development Phase shall be borne by City.

(iv) The costs incurred to preserve the façade of the Decker Building shall be allocated to the City.

"Development Fee" means the fee to be paid by Authority to Developer for the work and services to be performed by Developer under this Agreement, as described in Section 8.1, such Development Fee to be paid to Developer in addition to the reimbursement of costs and expenses of developing the Public Facilities as provided in this Agreement.

"Development Plan" means the Preliminary Plans and Specifications, Construction Schedule, and Development Budget, all as reasonably approved by City, Authority and Developer during the Pre-Development Phase, and all as the same shall be further developed and amended with the reasonable approval of City, Authority and Developer during the Construction Documents Phase and the Construction Phase of the development of the Project. In the event that the Parties have not agreed upon a Development Plan by the "Pre-Development Phase Outside Date" defined on the Schedule of Project Deadlines attached as Exhibit "G" to this Agreement. Developer, City or Authority may terminate this Agreement by notice to the other parties.



"Expense Allocation" has the meaning ascribed to such term in the definition of Development Budget.

"Final Plans and Specifications" has the meaning ascribed to such term in Section 4.2.2.

"Financing Progress Date" has the meaning ascribed to such term in Section 10.6.

"Force Majeure" means war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, earthquakes, hurricanes or tornados (or other weather conditions of unusual severity) Acts of God, shortage of transportation or materials or interruption of the delivery of materials, unusual delays in receiving permits, or any other cause or contingency similarly beyond the control of the Parties. In order to avoid any dispute regarding the occurrence and duration of any Force Majeure event, any of the foregoing events shall only be considered "Force Majeure" for purposes of this Agreement if the party claiming a Force Majeure delay notifies the other party in writing of the occurrence of any such event within ten (10) business days after the later of (x) the commencement thereof or (y) the date upon which Developer, City or Authority, as applicable, becomes aware of such event and of the likelihood that such event will cause a delay and then subsequently notifies the other party in writing of the length of any such delay to be claimed within ten (10) business days after the cessation thereof.

"Franchise" means the right to operate as a full service hotel under a nationally recognized brand such as Hilton, Westin, Crowne Plaza, Hyatt, Intercontinental or Loews or other brand reasonably acceptable to the City and the Developer.

"Franchise Agreement" means the agreement for the Hotel executed by and between Developer and the Franchisor granting Developer the right to use the Franchise for the Hotel.

"Franchisor" means the party granting the Franchise for the Hotel.

"Garage" means the multilevel garage, containing approximately six hundred (600) parking spaces or such other number parking spaces as Developer and City shall mutually agree during the Pre-Development Phase, that Developer shall cause to be constructed on Main Street below the Conference Center pursuant to the terms of this Agreement.

"Garage Parking Agreement" means the certain agreement to be agreed upon during the Pre-Development Phase pursuant to which City or Authority will make certain parking spaces in the Garage available to Developer for use by Hotel guests at the rates described in § 5.13.

"Grant Agreement" means the grant agreement to be entered into by Authority and Developer as described in Section 5.7.

"Hazardous Substances" means any substance that is regulated under any Environmental Laws as a pollutant, contaminant or toxic, radioactive or otherwise hazardous substance, including petroleum, its derivatives or by-products and other hydrocarbons. For the purposes of this definition, "Environmental Laws" means any and all federal, state, county and



local statutes, laws, regulations and rules in effect on the date hereof relating to the protection of the environment or to the use, transportation and disposal of any pollutant or contaminant or toxic, radioactive or otherwise hazardous substance, including petroleum, its derivatives or by-products and other hydrocarbons.

"Hotel" means the hotel containing approximately three hundred (300) guest rooms (including one and two bedroom luxury and presidential suites) or such other number of guest rooms as Developer and City shall mutually agree during the Pre-Development Phase, that Developer plans to construct contiguous to the Conference Center and Garage. The Hotel shall be a full service hotel suitable for hosting conventions, developed in compliance with this Agreement. The Hotel shall contain at least three (3) restaurants (which may include as one of the restaurants, a lounge) and a unique signature feature (for example, a wine library and/or rooftop garden). The design of the Hotel shall be approved by the City in accordance with Article 7. The Hotel shall be franchised by a nationally recognized hotel franchisor of full service hotels such as Hilton, Westin, Crowne Plaza, Hyatt, Intercontinental or Loews or other franchise reasonable acceptable to the City and the Developer.

"Hotel Grant Agreement" has the meaning ascribed to such term in Section 5.11.

"Hotel Site" means the real property, including air rights, which is the part of the Property within which the Hotel is to be developed, as more specifically described on Exhibit "B" to be attached hereto during the Pre-Development Phase.

"Notice to Proceed" means written notice from City to Developer to commence construction of the Garage and Conference Center, as provided in Section 5.2.

"Mortgagee Protection Agreement" has the meaning ascribed to such item in Article 12.

"Operating Agreement" means the certain agreement to be agreed upon during the Pre-Development Phase into which City and Developer will enter to provide the terms and conditions upon which Developer or its designee will operate the Conference Center.

"Other Agreements" means the Operating Agreement, the Garage Parking Agreement, the Condominium Instruments, the Grant Agreement, the Hotel Grant Agreement and the Mortgagee Protection Agreement.

"Outside City Obligations Date" has the meaning set forth in the Schedule of Project Deadlines.

"Outside Completion Date" has the meaning ascribed to it in Section 2.5.

"Owner's Representative" means one individual designated from time to time in writing by each of Developer and of City, who shall be given full authority to approve matters under this Agreement, provided that all such approvals must be in writing. In addition, the City's Owner's Representative shall receive the Developer's reports and disseminate as appropriate. The role of the City's Owner's Representative shall be to implement the approved Development Budget and Development Plan. Accordingly, the authority of such Owner's



Representative to act on behalf of the City shall be limited to the Construction Documents Phase and the Construction Phase only, and in no event shall such Owner's Representative have the authority to bind City to any modifications to this Agreement or the Other Agreements or approve matters that deviate from or are inconsistent with the Development Budget or Development Plan. Likewise, the authority of Developer's Owner's Representative to act on behalf of Developer shall be limited to the Construction Documents Phase and the Construction Phase only, and in no event shall such Owner's Representative have the authority to bind Developer to any modifications to this Agreement or the Other Agreements or approve matters that deviate from or are inconsistent with the Development Budget or Development Plan.

"Pre-Closing Period" means the period between the date of this Agreement and the Closing, which period shall not extend beyond the "Outside Pre-Closing Period Date" set forth on the Schedule of Project Deadlines attached as Exhibit "G" to this Agreement, unless extended as set forth in this Agreement.

"Pre-Development Budget" means that budget which is attached to this Agreement as Exhibit "F", which itemizes certain authorized expenditures during the Pre-Development Phase, as that budget may be modified jointly by City/Authority and Developer from time to time.

"Pre-Development Contribution" means with respect to each of Developer and City/Authority, the amount to be expended by it in connection with the Pre-Development Phase, as more specifically described in Section 4.2.1. Initially, Developer shall contribute \$375,000 and City and/or Authority shall contribute \$375,000 into an escrow account with a mutually agreeable third-party escrow agent in accordance with the terms of an escrow agreement to be agreed upon by the Parties. Such escrow agreement shall provide for submission of invoices by Developer and the City/Authority to the escrow agent, with copies to the other party, and the right for each party to approve expenditures to the other prior to disbursement. In the event a Party's contribution to such escrow has been depleted, such Party will escrow additional sums (initially, each party shall deposit an additional \$375,000, with any additional required sums being deposited in \$100,000 increments) necessary to cover such Party's share of expenses incurred in the Pre-Development Phase. Any portion of each Party's respective contribution that has not been disbursed to cover expenses of such Party prior to Closing will be paid to the applicable Party at Closing.

"Pre-Development Phase" means the period during the term of this Agreement during which the Parties will endeavor to reach agreement on the Preliminary Plans and Specifications, the approved general contractor for the Project, the Development Plan, the Development Budget and all of the Other Agreements, as further described in Section 4.2.1, and enter into a guaranteed maximum price contract with the general contractor for the Project as provided in Sections 4.2.1 and 4.3.

"Preliminary Plans and Specifications" shall have the meaning ascribed to it in Section 4.2.1(a)(iv).

"Project" means the Garage, Conference Center, Hotel and Related Improvements.



"Property" means the parcels (including the Air Rights) described in Exhibits "B" and "C" combined.

"Public Facilities" means the Conference Center and the Garage.

"Public Facilities Costs" means the sum of (i) the total amount paid to Contractors (excluding any double counting as the result of amounts paid by a general contractor to its subcontractors) for construction of the Public Facilities pursuant to the guaranteed maximum price contracts to be entered into with such Contractors pursuant to Section 4.3 below, (ii) the Public Facilities' share of all fees and expenses paid to the Specialists and Consultants in accordance with the terms of this Agreement, and (iii) such other costs of developing and constructing the Public Facilities as City and Developer mutually agree upon in the Development Budget. The approved Public Facilities Costs will be set out in the Development Budget to be agreed upon by the Parties during the Pre-Development Phase.

"Public Facilities Outside Completion Date" has the meaning ascribed to it in the Schedule of Project Deadlines.

"Related Improvements" means the following improvements, which Developer shall construct pursuant to Section 2.4:

Landscaping and sidewalks constructed in accordance with the City of Norfolk Street and Sidewalk Design Standards at street level outside of the Property;

"Schedule of Project Deadlines" shall have the meaning ascribed to it in it in Section 2.5.

"Specialists and Consultants" means: (a) the Architect, (b) a cost estimator, (c) a geotechnical engineering firm, and (d) a civil engineering firm, together with such other planning, architectural, engineering, interior design and other specialists and consultants for the design and construction of the Garage and Conference Center, as may be approved by City pursuant to Sections 4.2.1(a)(ii) and 4.3.

"Target Completion Date" has the meaning ascribed to it in Section 2.5.

"Third Party Institutional Mortgagee" has the meaning ascribed to it in Section 10.7.

"Unit" in the singular form means either the City's Unit or the Developer's Unit, and in the plural form means both.

ARTICLE 2 **THE PROJECT**

2.1. Garage and Conference Center (Public Facilities). With the cooperation and assistance of City and Authority, Developer shall construct a multi-level garage, containing approximately six hundred (600) parking spaces and a Conference Center of approximately 50,000 net usable square feet, with appurtenant facilities and amenities between Main Street and



Plume Street, in downtown Norfolk, Virginia, on that portion of the Property owned or to be owned by Authority and to be further described on Exhibit "C", to be attached during the Pre-Development Phase. The Conference Center and Garage shall be constructed of a quality comparable to and compatible with the standards of quality and efficiency found in the Hotel, subject to the procedures set forth in this Agreement and shall qualify as (a) an International Association of Conference Centers top standard technologically advanced conference center and (b) a conference center approved by the U.S. Department of Defense to hold classified government meetings. The number of parking spaces in the Garage and the square footage of the Conference Center may be adjusted during the Pre-Development Phase by joint agreement of City/Authority and Developer.

2.2. Hotel. Developer shall construct the Hotel fronting on Main Street within the Hotel Site, above and integrated with the Public Facilities. The Hotel shall have a total development cost (which shall refer to the soft and hard costs customarily included and funded under a typical construction loan budget) of at least Sixty-Four Million and 00/100 Dollars (\$64,000,000.00).

2.3. Shared Facilities. The Public Facilities and the Hotel shall be connected internally, at one or more levels (with at least one such internal connection to be at the uppermost level of the Conference Center unless the Parties otherwise agree in the Preliminary Plans and Specifications), and will share certain facilities, including a loading dock and a security office. Part of the costs to design and construct these shared facilities will be allocated in accordance with the Expense Allocation.

2.4. Related Improvements. Developer shall construct the Related Improvements to enhance and benefit the operation of the Garage, Conference Center and the Hotel. Developer shall undertake and pursue the construction of the Related Improvements without unreasonable interference with the construction of the Garage, Conference Center and Hotel, and shall construct the Related Improvements in a first class and workmanlike manner. Developer shall construct the Related Improvements on a schedule designed to complete construction of the Related Improvements prior to the opening of the Garage, the Conference Center and the Hotel. City shall maintain the Related Improvements at its sole cost and expense in accordance with standards of cleanliness and repair that are consistent with those of the Hotel and the Conference Center. The costs to design and construct these Related Improvements will be allocated in the Development Budget in accordance with the Expense Allocation.

2.5. Construction Schedule. The Parties desire that the Project be completed in time for a grand opening of the Conference Center and Hotel on or about the "Target Completion Date" set forth on the Schedule of Project Deadlines attached as Exhibit "G" to this Agreement (the "Schedule of Project Deadlines"); therefore, the Parties shall undertake their respective responsibilities with respect to design and construction of the Garage, Conference Center, Hotel and Related Improvements in good faith, using commercially reasonable efforts and on such schedule as is reasonably required to achieve this desired grand opening date. A construction schedule is attached hereto as Exhibit "E" (as it may be subsequently amended by mutual written agreement of City and Developer, the "Construction Schedule"). This Construction Schedule is an estimate of the time required to perform the various components of the construction process and is subject to modification due to Force Majeure events and Authority or City Delays. City

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and Authority shall have the right pursuant to paragraph (g) of Section 10.1 to terminate this Agreement if the Garage, Conference Center and Hotel are not Completed prior to the "Outside Completion Date" set forth on the Schedule of Project Deadlines, subject to reasonable extensions by reason of Force Majeure events. Developer does not guarantee completion in accordance with this schedule.

2.6. Obligations of Authority and City. In order to permit the Project to proceed in accordance with the proposed schedule, Authority and City covenant with Developer that Authority will have (i) acquired full ownership and control of the Property, free of all tenancies or other occupancy rights of any nature whatsoever, (ii) authorized and caused to be completed (a) other activities necessary to prepare the Property for development and (b) the relocation or abandonment of underground utilities, (iii) have a Phase I Environmental Site Assessment of the Property completed (and, if a Phase II Environmental Site Assessment of the Property is mandated or recommended by the Phase I Environmental Site Assessment, then a Phase II Environmental Site Assessment), and (iv) arranged for necessary financing for the development of the Public Facilities by not later than the "Outside City Obligations Date" set forth on the Schedule of Project Deadlines. City shall also cause the relocation of the electrical vault located near the boundary of the Property on Main Street as provided under Section 5.4 of this Agreement. Authority and City further covenant with Developer that, by not later than the Outside City Obligations Date, the Property shall be zoned to permit the development of the Project and that a Downtown Development Certificate will have been issued to permit the Project to be constructed. City shall deliver the Phase I Environmental Site Assessment referenced above during the first forty-five (45) days of the Pre-Development Phase.

2.7. The Condominium. During the Pre-Development Phase, the Parties shall jointly develop the Condominium Instruments or such alternative documentation required to create any alternative ownership/conveyance structure agreed to by the Parties as further provided under Article 16 of this Agreement. It is understood and agreed by the Parties that the Condominium Documents or such alternative structure as may be agreed upon will provide that City shall retain ownership of the underlying land upon which the Project will be constructed.

ARTICLE 3

TERM

The term of this Agreement shall commence upon the date of this Agreement and, unless terminated sooner as provided in this Agreement, shall expire on the later to occur of the date on which the Project is completed, punch-list items included, in accordance with the Development Plan except those provisions which by their terms are intended to apply beyond such expiration date.

ARTICLE 4

DEVELOPER SERVICES

4.1. Engagement of Developer. In addition to its other obligations in this Agreement, particularly, the construction of the Hotel, Authority engages Developer to perform the services described in Section 4.2, all in accordance with the terms and conditions of this Agreement. In performing its duties under this Article 4, Developer shall be an independent contractor and

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nothing contained in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between Developer and Authority or Developer and City.

4.2. Developer Services. Developer shall perform the following services in connection with the construction of the Project during the term of this Agreement:

4.2.1 Pre-Development Phase.

(a) During the Pre-Development Phase, Developer shall have the right to conduct all such due diligence with respect to the Property and the feasibility of developing the Hotel as Developer may deem to be necessary or appropriate and Authority and City shall fully cooperate with Developer in such due diligence activities. Developer shall work with City and Authority to coordinate initial development activities and shall provide the following services:

(i) Preparation of preliminary operating projections for the Conference Center for review and approval by City;

(ii) (x) Recommendation to City of the Specialists and Consultants for the Garage and Conference Center, including the Architect(s) and Conference Center Consultant and, (y) following approval of such Specialists and Consultants by City and Authority, negotiation, review and evaluation of proposed contracts with Specialists and Consultants all of which shall be subject to City's prior approval and done in consultation with City, but executed in Developer's name. The Authority shall pay the costs of Specialists and Consultants retained under this Article 4 in accordance with the provisions of Article 8;

(iii) Establishment of the Public Facilities' design criteria with City, Franchisor and marketing consultants;

(iv) Preparation of preliminary drawings and specifications through the design development phase for the Public Facilities and Hotel in accordance with the approved design criteria, such preliminary plans and specifications to be consistent with the character of Main Street, and in conformance with the Design Guidelines for the Downtown Historic Overlay District and the criteria for obtaining a Downtown Development Certificate (which Certificate must be issued during the Pre-Development Phase) (the "Preliminary Plans and Specifications"). The Preliminary Plans and Specifications shall include enough detail to make them sufficient for use in obtaining binding, guaranteed maximum price bids from general contractors and other vendors for the construction and equipping of the Project and shall specifically include the following:

(A) Full (100%) design development plans with details on the quantity, quality and specifications of finish materials and systems (with full construction plans and specifications approximately 40% completed); and

(B) interior design plans with details on quantity, quality and specifications of finish materials and systems for all furniture, fixtures and equipment, all owner supplies and equipment, and all technology systems.



In preparing the Preliminary Plans and Specifications, the Architect shall be instructed to preserve, to the extent practically and economically feasible, the façade of the Decker Building.

(v) Reviewing, commenting on and coordinating changes in such Preliminary Plans and Specifications that are requested by City so long as such changes are consistent with the Development Budget. (The Preliminary Plans and Specifications, as finally approved during the Pre-Development Phase by Developer, Authority and City will form a part of the Development Plan); and

(vi) Preparation of the Development Budget for the Project in consultation with the development budget consultant retained for such purpose for City's review and approval. The proposed development budget shall, among other things, be based upon the guaranteed maximum price construction contract to be entered into during the Pre-Development Phase with the general contractor selected pursuant to the provisions of this Section 4.2.1. Such proposed development budget shall include all costs and expenses that this Agreement provides shall be included as costs of the Authority or City, providing a separate breakdown of such costs for the Pre-Development Phase, the Construction Documents Phase, and the Construction Phase. Upon approval of the proposed development budget by the Parties, such proposed development budget shall become the Development Budget;

(b) During the Pre-Development Phase, each of (i) City or Authority and (ii) Developer shall make their respective contributions to the Pre-Development Contribution escrow, which shall be applied, towards all expenses incurred by the City or Authority and Developer during the Pre-Development Phase, excluding legal expenses incurred by Developer to establish its internal joint venture and any legal expenses relating to any disputes between the Parties, all in accordance with the Pre-Development Budget. Expenses to be paid out of the Pre-Development Contribution shall include fees and expenses incurred for (i) Specialists and Consultants, (ii) any independent consultants hired by City or Authority in connection with the Project, and (iii) reports and studies relating to the Project (including the Environmental Site Assessment(s) referenced in Section 2.6 of the Agreement). Except as otherwise set forth in the Pre-Development Budget, costs and expenses incurred during the Pre-Development Phase will be allocated between the Parties in accordance with the following:

(i) Fees of the Architect and its consultants sufficient to (A) perform all functions necessary for, and preparation of, the Preliminary Plans and Specifications, (B) determine the total development cost of the Project, including the Hotel, Conference Center and Garage, and (C) determine the Expense Allocation (50% City; 50% Developer);

(ii) Preparation of the Development Budget by a budget Consultant (50% City; 50% Developer);

(iii) Evaluation of the design and market strategy of the Conference Center by a conference center consultant (100% City);

(iv) Obtain new real estate appraisal of each of the Conference Center, Garage and Hotel (50% City; 50% Developer); and



(v) Obtaining Franchise, updating feasibility studies and obtaining Financing (100% Developer).

(c) Following the preparation of the Preliminary Plans and Specifications, Developer shall use them as the basis for obtaining bids (with respect to construction of the Project) and cost estimates (with respect to FF&E and other components of the Project), on a cost of materials plus general conditions, plus overhead and profit with guaranteed maximum price basis, from general contractor(s) and other vendors for the construction and equipping of the Project. Such bids (and any construction contract entered pursuant thereto) shall cover all work reasonably inferable from the Preliminary Plans and Specifications and shall be subject to qualification only for the unforeseen conditions and similar circumstances contemplated by the standard AIA form construction contract. The Parties may mutually agree to have the general contractors bid based upon a cost savings sharing/incentive provision as mutually approved by the City and Developer. Construction of the Project shall be bid to a minimum of three (3) general contractors using a bid list of general contractors mutually approved by the City and Developer. The Preliminary Plans and Specifications and the bid packages shall be prepared to enable the bidders to provide separate prices for each of the Hotel, Related Facilities, Conference Center and Garage, although the contract for the construction for the Project shall be awarded to a single general contractor. The construction contract procurement process and contract shall be in accordance with the provisions of Section 4.3. The bids by the general contractors shall include options for creating cost savings by value engineering, the bonding capacity of the bidding entity, a proposed schedule for completion of the work, and the ability and experience of the bidding entity with similar public-private projects. Developer shall select the general contractor to which it proposes to award the job, which need not be the contractor that has submitted the lowest bid, for review and approval by the City and the Authority. Following mutual selection of the general contractor, Developer shall work with the City and Authority and the selected contractor, as well as the Specialists and Consultants (including the Architect) and other consultants to value engineer the Project and to refine the Project design and cost with the goal of arriving at a final guaranteed maximum price with the selected general contractor that is satisfactory to Developer, the City and the Authority. The guaranteed maximum price agreed to with the selected general contractor, as modified by the refinement process described above, shall be incorporated into the Development Budget and included in the construction contract to be entered into by Developer with such selected general contractor prior to the expiration of the Pre-Development Phase.

(d) The Pre-Development Phase shall commence on the date hereof and shall continue until the earlier to occur of: (i) (A) final agreement among City, Authority and Developer on (v) the Preliminary Plans and Specifications, (w) the general contractor to construct the Project and its final guaranteed maximum price, (x) the Development Plan, (y) the Development Budget and (z) the Other Agreements and (B) execution of the guaranteed maximum price construction contract for the Project by the Developer and the selected general contractor; or (ii) termination by either (A) City and Authority or (B) Developer (such Party electing to terminate being referred to as the "Terminating Party"), which may be exercised by such Terminating Party giving written notice to the other Parties at any time prior to or after the Pre-Development Phase Outside Date and prior to the date the Parties enter into an amendment to this Agreement memorializing their final agreement on the Development Plan, the Development Budget and the Other Agreements.

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(e) If either party terminates this Agreement during the Pre-Development Phase (either pursuant to Section 4.2.1(c) above or Section 4.4 below) (i) any remaining portion of the Pre-Development Contribution (after payment of all expenses incurred to date) shall first be paid to the party (the "Non-Terminating Party") that is not the Terminating Party up to the total amount paid by the Non-Terminating Party to the Pre-Development Contribution, with any balance of the Pre-Development Contribution being paid to the Terminating Party; (ii) if the remaining portion of the Pre-Development Contribution is not sufficient to fully reimburse the Non-Terminating Party for its portion of the Pre-Development Contribution pursuant to the foregoing, the Terminating Party shall pay the Non-Terminating Party the unreimbursed balance of the Non-Terminating Party's Pre-Development Contribution; (iii) neither party shall incur any further Pre-Development Phase expenses; (iv) Developer shall provide City with copies of (and transfer to City all transferable rights in) all reports, studies, plans, specifications and other documentation prepared or obtained in connection with the Project prior to such termination; and (v) the Parties shall have no further obligations under this Agreement except for the foregoing and except for any indemnification obligations relating to acts occurring prior to termination of this Agreement.

4.2.2 Construction Documents Phase. Following the end of the Pre-Development Phase, unless this Agreement has been terminated, Developer shall coordinate with City and with the Specialists and Consultants to obtain final construction drawings and specifications for the Project (the "Final Plans and Specifications") acceptable to Developer and City, and shall provide the following services:

(a) Providing lists of, and detailed specifications for, furnishings, fixtures, equipment, operating supplies, fixed asset supplies and the like for the Conference Center that meet with City's approval;

(b) Working with City and Specialists and Consultants to enhance compatibility of Conference Center architectural drawings with other elements such as interior design, front desk design, kitchen and the like;

(c) Preparation of a development schedule for the Project reasonably acceptable to City;

(d) Timely submission to City, for its approval, of final drawings and specifications for the Project, including landscaping plans, mechanical and electrical drawings, architectural appearance, interior design schemes and specialized area plans for the communication systems and the like;

(e) Finalizing agreements with the Contractors (other than the general contractor) in Developer's name; which Contractors shall be paid in accordance with the provisions of Article 8;

(f) Subject to Section 15.4, obtaining or causing to be obtained on behalf of City or Authority, all building, development, and other permits necessary to commence construction of the Garage and Conference Center; and



(g) Exercising reasonable good faith efforts to acquire approval of the United States Department of Defense for the Conference Center's ability to host classified government meetings.

The Construction Documents Phase shall have been completed when all requirements in Section 4.2.2 have been satisfied, the Final Plans and Specifications for the Project have been finally approved by all Parties and contracts for the Project (other than the guaranteed maximum price contract with the selected general contractor for the construction of the Project, which will be entered into in the Pre-Development Phase) have been approved by City and Authority and are ready for execution by Developer pursuant to Section 4.3 of this Agreement.

4.2.3 Construction Phase. Once construction of the Public Facilities commences, Developer shall serve as a Project executive and shall provide the following services:

(a) Making periodic visits to the job site to review the work and progress of construction with the Contractors and Specialists and Consultants;

(b) Consulting with City regarding proposed changes and modifications to the final drawings and specifications of the Conference Center and Garage and coordinating issuance of change orders if and when changes are approved by City and other necessary Parties;

(c) Responding to any questions from City, or Authority regarding the work or progress of construction, construction methods, scheduling, and the like;

(d) Coordinating the turnover of portions of the Conference Center, as and when the same are appropriately, completed, to Developer or its affiliate as the Operator under the Operating Agreement;

(e) Coordinating efforts by all appropriate parties to complete the Public Facilities in accordance with the final drawings and specifications, as the same may be amended from time to time with the approval of all necessary Parties, such efforts to include coordinating and assisting with all third party inspections, installations and close-out of work, including the scheduling of inspections and the preparation of punch-lists;

(f) Subject to Section 14.4, obtaining, or causing the Architect or general contractor to obtain, on behalf of City or Authority, a permanent certificate of occupancy (or other appropriate and necessary governmental permission to occupy) with respect to the Public Facilities.

4.2.4 General. During all phases of development of the Public Facilities (commencing upon the beginning of the Construction Documents Phase), Developer shall do the following:

(a) Provide City with bi-weekly oral progress reports appropriate to keep the City fully apprised of the progress of development, and provide City with monthly written progress reports that reflect all costs paid under the Development Budget during the



preceding month and which also reflect a comparison of aggregate costs paid for budgeted items through the end of the preceding month with total budgeted costs for such items;

(b) Subject to 4.2.3(b), prepare and submit to City supplements and refinements to the Development Budget for City's approval as development of the Public Facilities moves through its various phases to completion;

(c) Subject to 4.2.3(b), notify City promptly of any actual or anticipated increase in a budgeted category within the Development Budget of which Developer becomes aware;

(d) Notify City promptly of any actual or anticipated change or delay in the development schedule of which Developer becomes aware;

(e) Assist in designing the Conference Center (or assist in the process of approving any changes to the Conference Center design) by providing information based on Developer's hotel operating experience;

(f) Supervise the timely and efficient performance of Contractors, Specialists and Consultants under their respective contracts with Developer to prompt all work being performed to be performed in a professional and workmanlike manner; and

(g) Provide that all design and construction criteria that are specifically required by the Franchise Agreement are correctly integrated into the design and construction of the Conference Center, and that any on-site inspections and approvals specifically required by such agreement are arranged and carried out on a timely basis.

4.3. Guaranteed Maximum Price Contracts. The contracts between Developer and the Specialists and Consultants (as described in paragraph (a)(ii) of Subsection 4.2.1) and the Contractors (as described in paragraph (c) of Subsection 4.2.1 and Subsection 4.2.2) shall name Authority and City as third party beneficiaries and shall provide that such contracts may not be amended without the approval of the Authority and City. The City and Developer shall mutually agree upon the method of procurement. The contracts shall include separate guaranteed maximum prices for the design and construction of the Garage and of the Conference Center, and the form and substance of all such contracts shall be subject to City's prior approval and shall be negotiated in consultation with the City, but executed in Developer's name. The guaranteed maximum prices must be approved in writing by the City. The Authority shall pay the costs of Contractors and Specialists and Consultants retained pursuant to this Article 4 with respect to the Public Facilities in accordance with the provisions of Article 8, except as provided in Section 4.2.1(b) with respect to the Pre-Development Stage.

4.4. Development Budget. The City and Developer shall prepare a proposed Development Budget for construction of the Project during the Pre-Development Phase. In the event that the Parties have not agreed upon a Development Budget by the Pre-Development Phase Outside Date, Developer, City or Authority (such Party electing to terminate being referred to as the "Terminating Party") may terminate this Agreement by notice to the other Parties given at any time prior to execution of an amendment to this Agreement memorializing the Parties' agreement on a Development Budget. All line expenditures may be revised, subject



to approval by City and Developer. Developer's internal on-site construction management costs ("On-Site Management Costs") may be included in the Development Budget; however, On-Site Management Costs charged to the City and Authority shall not exceed a total of \$500,000.

4.5. Construction of the Hotel. Developer shall construct the Hotel simultaneously with the Public Facilities and shall attempt, without so guaranteeing, to complete construction of the Hotel on the same day the Public Facilities are Completed. Unless otherwise approved by City in writing, the Hotel shall be constructed in accordance with the Development Plan approved by the Parties in the Pre-Development Phase.

4.5.1 Construction Phase. Developer will commence construction of the Project promptly after the Closing, and will expeditiously pursue completion of construction with a completion date not later than the Target Completion Date, subject to Force Majeure events and to Authority or City Delay. During construction, Developer agrees to the following conditions and instructions:

(a) As the initial phase of construction of the Project, Developer shall demolish, grade, complete underground plumbing and electrical work, pour the slab and complete similar preliminary site work performed on the Property with the cost allocated in accordance with the Expense Allocation.

(b) During the course of construction, Developer shall construct the Related Improvements with the cost allocated in accordance with the Expense Allocation.

(c) To construct the Project substantially in conformance with the Final Plans and Specifications previously approved by City, and in accordance with all applicable building codes and regulations;

(d) To be fully responsible for constructing the Project and under no circumstances require Authority or City to pay for any labor or material ordered or purchased by Developer in and about the construction of the Hotel;

(e) To cause all electric and telephone utility lines and equipment for the Project to be placed under ground; and

(f) To apply for the balance of the building permit, utility permits, utility easements and certificates of occupancy as well as all licenses and permits required for the operation of the Project including an alcoholic beverage permit.

4.5.2 Post Construction Phase. Upon completion of construction of the Project substantially in accordance with this Agreement, Developer shall provide City with the following:

(a) A copy of the final certificate of occupancy for the Garage, Conference Center and Hotel from the appropriate officials of City;

(b) A long form release of mechanic's liens (unless the title insurance company waives the long form requirement) executed by all persons providing labor and/or



materials to Developer in and about the construction of the Project or a letter from a title insurance company doing business in City and reasonably acceptable to City and Authority stating that it will issue a title policy to Developer and City or Authority without excepting filed and unfiled mechanic's liens from coverage under the policy, whichever alternative Developer elect;

(c) A certification from Architect that the Hotel has been substantially completed in accordance with the Final Plans and Specifications; and

(d) Copies of all documents relating to the operations of the Public Facilities in the possession or control of the Developer, such as warranties.

ARTICLE 5

OBLIGATIONS OF CITY OR AUTHORITY

5.1. Approvals. Whenever a matter requires the approval of City and/or Authority under this Agreement, such approval shall not be unreasonably withheld, conditioned or delayed, and the appropriate entity shall work closely, in a reasonable manner, and in good faith with Developer to achieve the high quality Project contemplated by this Agreement, and so that all of the facilities can be completed on the same date. Any approvals by City and/or Authority as provided under this Agreement are in the capacity as parties to this Agreement only and shall be independent of any permitting and other municipal approvals that must be obtained from City in its capacity as a municipality. Furthermore, any consent or approval standards, response times or other terms or requirements relating to approvals or consents apply to those provided for under this Agreement only (and are not applicable to municipal approvals or consents).

5.2. Notice to Proceed. At such time as City, Authority and Developer shall have approved the Development Plan and the Development Budget and Developer shall have satisfied the contingencies and requirements in Section 4.5.1 in all material respects and obtained all necessary permits for the construction of the Project, City shall give Developer written Notice to Proceed with the construction of the Project, but Developer shall have no obligation to commence construction of the Project until the Closing occurs.

5.3. Ownership of Property. Authority shall own the Property in fee simple free and clear of all liens and encumbrances (except as otherwise permitted herein), except for the Hotel Site, which shall be conveyed to Developer in accordance with the provisions of this Agreement.

5.4. Utilities. Authority shall cause to be provided at its own cost, if any, water, storm and sanitary sewer, electric, gas and telephone utility lines of adequate size and capacity to service the Project as determined by Developer which shall be brought to the Property line of the Project and capped at that location by Authority, but all connection fees, tap fees and the cost of utilities service for the Hotel shall be the responsibility of Developer. Authority shall complete the foregoing work prior to the Closing unless otherwise agreed by Developer. In addition, subsequent to Closing, Authority will relocate, at its own cost and expense, the existing electrical vault located on Main Street to a location mutually acceptable to the City, Developer and Dominion when contemplated by the construction phasing schedule established by the Architect and the Parties.



5.5. Zoning. City shall assure that the Property is properly zoned for use as a hotel, garage and conference center to permit development of the Project in accordance with the Development Plan.

5.6. Permits. Authority shall execute as owner, as may be required, all building permit applications, plans of development, utility permit applications, utility easements, request for certificates of occupancy and such other documents as may reasonably be required for Developer to obtain building permits and necessary utility service in and about the construction of the Project; provided, Developer agrees to indemnify and save Authority harmless from any liabilities arising for incorrect information therein, unless such information was provided by City or Authority.

5.7. Grant Agreement. At Closing, Authority and Developer shall enter into a Grant Agreement providing a grant of \$750,000 over a ten (10) year term to support the development of a restaurant of high quality reputation and customer acceptance (as approved by the City) as part of the Hotel. As set forth in the preliminary draft of the Grant Agreement attached as Exhibit J, the Grant shall be based upon the Developer's enhancement of the specified economic indices, the Developer's performance and the City's economic development policies, and the Grant Agreement shall not contain a cap on the amount of the annual distribution from the grant, other than the total limit of \$750,000 over the ten year term.

5.8. Certification. Promptly after the Conference Center is Completed and certificates of occupancy have been issued, City will furnish Developer an appropriate instrument certifying Developer has complied in all material respects with the provisions hereof relating to the construction of the Project. If City shall, for cause, refuse or fail to provide either certification, the appropriate party shall, within ten days after written request by Developer, provide Developer with a written statement indicating in adequate detail how Developer has failed to complete the construction of the Project in conformity with this Agreement, or is otherwise in default, and what measures or acts will be reasonably necessary in the opinion of the entity issuing the statement, for Developer to take or perform in order to obtain certification.

5.9. Other Documentation. City or Authority as the case may be, will provide to Developer any other information or documentation, reasonably requested by Developer, that such party is permitted by its rules and regulations to provide, provided such information will reasonably assist Developer in the performance of any of Developer's duties and obligations under this Agreement.

5.10. Garage Parking Agreement. Parking spaces shall be made available to Hotel guests pursuant to a Garage Parking Agreement between Authority and Developer.

5.11. Hotel Grant. City has determined that in order to induce the development of a hotel of a quality compatible with the Conference Center, a grant in the amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) is necessary and is to be applied against the cost to construct the Hotel. Therefore, in addition to the Grant contemplated by Section 5.7 of this Agreement, either Authority or City's Economic Development Authority, as designated by City (such designated entity being referred to herein as the "Granting Authority") will provide to Developer a grant in the amount of Seven Million Five Hundred Thousand Dollars

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(\$7,500,000.00) (the "Hotel Grant") to be applied against the cost of construction of the Hotel (exclusive of any development fee payable to Developer in connection therewith) and shall enter into a "Hotel Grant Agreement" reflecting the terms set forth in this Section 5.11 prior to the commencement of the Construction Phase. The Hotel Grant Agreement shall contain the terms set forth herein and the final form of the Hotel Grant Agreement shall be agreed upon by the Parties during the Pre-Development Phase. The Hotel Grant Agreement, amongst other things, shall provide that (i) the Hotel Grant shall be used to pay the first Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) of hard construction costs for the Hotel; (ii) the Hotel Grant will be refundable by Developer to City or Granting Authority (as designated by City) if Developer fails to open the Hotel to the public as required, and by the date specified, under Section 10.7(d) of this Agreement (subject to Force Majeure or other permitted delays as set forth in Section 10.7(d) of this Agreement) and the City thereafter terminates this Agreement as the result thereof; and (iii) Developer shall post an irrevocable letter of credit (on terms and from a financial institution reasonably satisfactory to City and Granting Authority) in the amount of the Hotel Grant to be held as security for Developer's obligation to reimburse the Hotel Grant as provided in clause (ii) above. Alternatively, in lieu of posting a letter of credit, Developer may elect to either (A) provide a personal guaranty of Developer's obligation to reimburse the Hotel Grant as provided in clause (ii) above in form and substance reasonably satisfactory to City from Developer's principal or principals who is or are guarantors of Developer's construction financing (if such guarantors do not include Bruce L. Thompson, then the proposed guarantor(s) shall be subject to Granting Authority's reasonable approval), or (B) agree that, in lieu of the proceeds of the Hotel Grant being used to pay the first \$7,500,000 of hard construction costs for the Hotel as provided under clause (i) above, such proceeds of the Hotel Grant shall be used to pay the last \$7,500,000 of hard construction costs for the Hotel. The Hotel Grant Agreement shall also provide that the amount of the Hotel Grant will be reduced on a proportionate basis if the actual total development costs for the Hotel (taking into account the actual costs of all line items therefor reflected in the Development Budget, but exclusive of, and deducting therefrom, any development fee in excess of five percent (5%) of the cost of the Hotel) are less than Sixty-Four Million Dollars (\$64,000,000.00), such reduction to be based on the same ratio as the actual total development costs for the Hotel as provided above reflected in the Development Budget bears to Sixty-Four Million Dollars (\$64,000,000.00). For example, if the actual total development costs for the Hotel are Sixty Million Eight Hundred Thousand Dollars (\$60,800,000.00) (a 5% reduction), the amount of the Hotel Grant shall be reduced by 5%. Finally, in consideration of the Hotel Grant, Developer agrees that if the net proceeds of the sale of the Hotel by Developer, during the five (5) year period beginning on the date the Hotel opens for business with the public, to a third party (expressly excluding transfers of minority interests in the entity that owns the Hotel or transfer of the Hotel to an Affiliate of Developer) exceed the "Cost Threshold" (as defined below), City will receive twenty percent (20%) of such excess sales proceeds. The "Cost Threshold" will equal the actual total Development Cost for the Hotel (as described above) minus the amount of the Hotel Grant and the "Cost Contribution" (as defined below). City's rights with respect to such excess sales proceeds shall be more particularly set forth in the Deed covering the Hotel Site to Developer reflecting these terms, the form of such Deed to be agreed upon by the Parties during the Pre-Development Phase. The terms and provisions set forth in such Deed regarding shared appreciation in value are not intended to create, and such terms shall not be deemed to create, any partnership relationship between City and/or Authority and Developer.



5.12. Cost Contribution. In addition, City has determined that in order to induce development of a hotel of a quality comparable with the Conference Center, the payment of certain costs otherwise allocated to the Developer under the Expense Allocation (for example, fees based on the number of DFUs, site work, piling and foundation work) will be paid by City up to a maximum additional payment by City of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the "Cost Contribution"). The Cost Contribution shall be provided on the same general terms as the Hotel Grant (i.e., proportionate reduction if total development costs of the Hotel are below Sixty-Four Million Dollars (\$64,000,000.00); letter of credit, guaranty or last dollars in; refundable for failure to open the Hotel in compliance with the terms of this Agreement; and recapture if the Hotel is sold above the Cost Threshold), such terms to also be set forth in the Hotel Grant Agreement.

5.13. Other Agreements.

5.13.1 Preliminary drafts of the following Other Agreements are attached as the following exhibits to this Amendment:

Exhibit H – Operating Agreement

Exhibit I – Garage Parking Agreement

Exhibit J – Grant Agreement

The attached drafts of such Other Agreements will be negotiated and finalized by the Parties during the Pre-Development Phase and will be executed by the applicable Parties at Closing (subject to any final modifications mutually agreed to by the Parties to reflect the final transaction).

The Parties agree that the term of the Operating Agreement will be sixty (60) years. The provisions regarding Satisfaction Surveys will be eliminated from the Operating Agreement. The Parties will review the provisions of the Operating Agreement regarding the Operating Committee and those providing an obligation for Developer to offer a discounted rate and allocate a certain percentage of rooms in the Hotel for conferences or events booked or reserved at the Conference Center by City or Authority. The parties agree that responsibility for the payment of Required Capital Expenditures will be allocated as set forth in the Operating Agreement. However, the Parties will review the provisions of the Operating Agreement regarding the application of any funds from the Reserve to the payment of Required Capital Expenditures. Defined terms in this paragraph have the meanings set forth in the Operating Agreement.

The Parties agree that the term of the Garage Parking Agreement will be sixty (60) years. The Garage Parking Agreement will be modified to provide the Developer with the option to either (i) lease 150 parking spaces for a period of sixty (60) years at a daily per space rate fixed at \$10.00 for the first twenty (20) years and adjusted at the beginning of the twenty-first and forty-first years to reflect increases in the Consumer Price Index or other mutually agreeable index, or (ii) have 150 spaces reserved for Developer's use but with payment based on the actual number of spaces used, with prices subject to adjustment by the City as currently provided in the draft of the Garage Parking Agreement attached to this Agreement as Exhibit I. In no event will the daily rate payable by Developer under clause (i) of the preceding sentence exceed the daily



rate charged to other hotels by City or Authority in other comparable City or Authority garages in Downtown Norfolk from time to time. In addition, the Garage Parking Agreement shall provide that during the first twenty (20) years of the term thereof, the Developer will be entitled to a credit against its payment obligations under the Garage Parking Agreement in an amount equal to two percent (2%) of the Conference Center annual revenues that are subject to sales tax. Finally, the Garage Parking Agreement shall provide that the Developer will operate any valet service provided at the Garage.

5.13.2 The Hotel Grant Agreement, the Deed and the Mortgagee Protection Agreement shall be mutually agreed upon by the Parties in good faith during the Pre-Development Phase.

5.14. Grand Opening. The Parties agree to coordinate and jointly participate in the Project's grand opening.

5.15. Tourism Development Grant. Developer intends to seek a tourism development grant pursuant to Section 58.1-3851.1 of the Virginia Code (the "Tourism Development Grant") with respect to the Hotel. City and Authority agree to cooperate, assist, and comply with all requirements of obtaining the Tourism Development Grant with respect to the Hotel. City and Authority agree to cooperate with and assist Developer in having the Hotel designated as an authorized tourism project enabling the Developer to receive the access fee and sale tax entitlement with respect to the Hotel revenues provided for under the Tourism Development Grant. Developer acknowledges that the City will obtain a Public Facilities Grant (Virginia Code Section 58.1-608.3) to finance the Public Facilities. The City and Authority have no objection to Developer adding a one percent (1%) access or facility fee to the Conference Center revenues provided (i) such fee does not affect the funds available to the City under the Public Facilities Grant, and (ii) Developer complies with all applicable laws in connection therewith.

ARTICLE 6

CITY AS AGENT OF AUTHORITY

To the extent that City (i) has expressly agreed by the terms of this Agreement to review budgets and plans, grant approvals and perform other services in furtherance of the design and construction of the Project, or (ii) upon the request of Authority, agrees to provide services or assistance to Authority in furtherance of the design and construction of the Project that City is not required by this Agreement to provide, the relationship of City to Authority shall be that of Authority's agent. During the Construction Documents Phase and the Construction Phase, each of the Developer and the City shall designate an "Owner's Representative" as provided under Section 1.1 of this Agreement. Each party shall have the right to rely upon the written decisions, consents and/or approvals of the other's Owner's Representative as provided in Section 1.1 of this Agreement.

ARTICLE 7

SCOPE OF DEVELOPER'S RESPONSIBILITIES

7.1. Design of Hotel. The City shall review the design of the Hotel at the completion of the following stages of design: (i) conceptual development after the preliminary schematic



design drawings are complete, (ii) design development (approximately 35% completed), (iii) at the point when the design is approximately 70% completed, and (iv) construction drawings (100%) completed. Developer shall submit the plans to the City for review at the aforesaid stages. Developer may not proceed with any stage of construction unless and until the design of that stage of construction is approved by the City, and, in order to enforce this Section 7.1, the City shall be entitled to seek injunctive relief without necessarily showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The City's review will be to assure that the design is in keeping with the character of Main Street, conformance with the Design Guidelines for the Downtown Historic Overlay District and the criteria for obtaining a Downtown Development Certificate. Notwithstanding the foregoing, Developer shall have the right to make changes in the design and construction of the Hotel to the extent required to meet the requirements of the Franchisor and to meet applicable codes, rules, regulations, statutes and ordinances. Developer must also obtain approval of the Norfolk Design Review Commission and all other approvals required by the Norfolk City Code and other applicable laws and regulations.

7.2. City's Review Procedures. With respect to the plans and specifications for the Hotel which require City approval, the City shall review the design submissions within thirty (30) days of its receipt of the same, and shall give notice to Developer within such thirty (30) day period of its reasonable determination that either (a) the same are approved as being in compliance with the terms of Section 7.1 above, (b) that such submissions are incomplete or otherwise fail to comply with the terms of Section 7.1 above, or (c) that such submissions must be modified in order to comply with the requirement of Section 7.1 above. If the City reasonably determines that the Hotel design documents submitted to it hereunder fail to comply with Section 7.1 above or must be modified in accordance herewith, it shall disapprove them or request such modification and shall, in its notice thereof to Developer, set forth with specificity the reasons for the failure to comply and/or the nature of the modification being requested. After correcting and/or modifying and completing the Hotel design documents in accordance herewith, Developer shall resubmit the Hotel design documents to the City within thirty (30) days after such notification from the City. The City shall, within thirty (30) days after the receipt of such revised Hotel design documents, give notice to Developer of whether it approves or disapproves or requires further modification of the Hotel design documents and if it disapproves or requests further modifications, shall, in its notice thereof to Developer, set forth the specific reasons for such disapproval or requested modifications. Each further revision and resubmission of any of the Hotel design documents by Developer and each further review of and notice of approval or disapproval or request for modification of any of the Hotel design documents by the City, shall be done or made pursuant to the procedures hereinabove set forth.

7.3. Modifications of Design by Developer. If Developer wishes to make modifications to the exterior design of the Hotel, or the interior configuration of the Hotel as it relates to the Common Elements and/or the Public Facilities, after plans have been approved by City, it shall submit such proposed modifications to the City for review and approval. Any such submission shall clearly identify all changes, omissions and additions as compared to the previously approved Hotel design documents. If the City determines, in its reasonable judgment, that the proposed modifications are acceptable, the City shall so notify Developer, the Hotel design shall be deemed to incorporate the modifications that have been approved by the City and Developer shall perform its obligations under this Agreement in accordance with the Hotel

design as so modified. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City shall so notify Developer, specifying in reasonable detail in what respects they are not acceptable, and Developer shall either (a) withdraw the proposed modifications, in which case, construction of the Hotel shall proceed on the basis of the Hotel design previously approved by the City, or (b) revise the proposed modifications in response to the City's objections, and resubmit such modifications to the City for review and approval within fifteen (15) days after such notification from the City. Each review by the City under this Section 7.3 shall be carried out within ten (10) days following the date of submission by Developer of the proposed modifications.

7.4. Modification of Design by City or Authority. City or Authority from time to time may request changes (whether to the plans and specifications or, during construction, by means of change orders) to any aspects of the Public Facilities or the Related Improvements shown in the Preliminary Plans and Specifications. Developer shall not be obliged to honor any such requests (i) if City or Authority do not agree to pay for the cost of such changes or change orders (including the cost of any delay associated with such changes or change orders), or (ii) if such proposed changes or change orders materially adversely impact the design of the Hotel. If Developer approves of such requested changes, the Development Budget shall be appropriately modified to reflect such changes and deemed approved by City or Authority, whereupon City and Authority shall be obligated to advance funds to cover such increased costs when requisitioned by Developer in accordance with the provisions of Section 8.7.

7.5. Standard of Care. In performing its services hereunder for development and construction of the Project, Developer makes no representations or warranties, express or implied, regarding the sufficiency of any design, plans or drawings prepared by others, but agrees to work with such persons to correct such designs, plans or drawings with such corrections to be made at no additional expense to Authority or City if and to the extent such corrections are not required due to the fault of Authority or City, or employees or agents of either. Any responsibility of Developer hereunder for development and construction of the Public Facilities shall be for services directly performed by Developer and shall be limited solely to deficiencies that are directly attributable to Developer's failure to exercise the reasonable care usually exercised by individuals and firms providing similar services. In addition, Developer shall use reasonable good faith to protect the economic interests of Authority and City with respect to development and construction of the Public Facilities; provided, however, that nothing in this Section 7.5 shall require Developer to allocate costs for shared facilities to the development budget of the Hotel in proportions not reasonably related to the respective benefits of such facilities to the Public Facilities. With respect to any claim that City has against Developer under this Section 7.5 which relates to an error or omission by the Architect or other Consultant or Specialist, the City shall look first to such other party and only after such remedies are exhausted may City pursue its claims against Developer.

7.6. Contractors, Specialists and Consultants. Developer shall use reasonable care to provide that all Contractors, Specialists and Consultants selected in connection with the design and construction of the Public Facilities shall be qualified to do the work they are engaged to perform and Developer shall make reasonable inquiries as to such persons' background, experience and reputation to assure they are qualified to undertake such work.



7.7. Budgets and Protections. Developer's participation in the preparation of the Development Budget, and revisions or supplements to the Development Budget, and in the preparation of cost projections that may be desired in connection with the operation of the Conference Center, are not intended and shall not be deemed to be a guarantee of the figures or results shown in any such budgets or projections.

ARTICLE 8

PAYMENT OF DEVELOPMENT AND CONSTRUCTION MANAGEMENT FEE AND EXPENSES

8.1. Development and Construction Management Fee. For the work and services to be performed by Developer under this Agreement, Authority shall pay Developer a Development Fee of five percent (5%) of the Public Facilities Cost, according to the following schedule:

8.1.1 Twenty-five Thousand Dollars (\$25,000) to Developer upon the securing by Developer of a commitment for financing for the Hotel reasonably acceptable to City and completion and approval by the Parties of a Development Budget;

8.1.2 Ninety percent (90%) of the remainder of the Development Fee in the Development Budget to Developer over the anticipated period of development, with payments to be made monthly proportionate to the construction of the Public Facilities; and

8.1.3 The remainder to Developer when the Public Facilities are Completed.

Proportionate payments of the Development Fee that become due during the course of construction are due and payable by Authority within twenty (20) days after City receives a monthly draw request from Developer for same in accordance with Section 8.7.

8.2. [Intentionally Omitted.]

8.3. [Intentionally Omitted.]

8.4. Expense Reimbursement. To the extent that such costs have been approved as a portion of the Development Budget or have otherwise been approved by City or Authority in writing, Authority shall reimburse Developer for reasonable and verifiable third-party costs and expenses allocable to the Public Facilities, subject to the limitations set forth in Section 8.5. Authority shall reimburse all such approved expenses to Developer within twenty (20) days after City receives a monthly draw request from Developer requesting payment for same in accordance with Section 8.7. The types of such costs for which Authority shall reimburse Developer shall be limited to the following:

Actual out-of-pocket costs incurred in performing its obligations under this Agreement for lodging, travel, meals, telephone, telegrams, postage, air express, printing, photocopies/reproductions, renderings, models, mock-ups, and other incidental expenses that are directly related to the planning, development and construction of the Garage and Conference Center and reasonably incurred by employees of Developer or the Consultants and Specialists.



8.5. Shared Expenses. Notwithstanding anything to the contrary contained in Section 8.4, whenever travel, consulting or similar expenses are incurred by Developer in connection with both the Public Facilities and the Hotel, such expenses shall be allocated in accordance with the Expense Allocation.

8.6. Third Party Fees. All Contractors, Specialists and Consultants and the like properly retained for the Public Facilities project by Developer shall be paid by Authority subject to the limits set in this Agreement and to the extent such fees are due and owed in accordance with Section 8.7.

8.7. Monthly Draw Requests. City and Authority shall fund payment through Developer from time to time of (i) proportionate payments of the Development Fee pursuant to paragraph (b) of Section 8.1, (ii) reimbursement of costs, all expenses, and related expenses pursuant to Section 8.4, and (iii) payments that are due and payable on contracts between Developer and the Specialists, Consultants and Contractors described in Section 4.3. Developer shall submit draw requests not more often than monthly to City or Authority covering all Developer Costs incurred to date (or to be incurred in response to written invoices). Developer shall not be obligated to advance funds to Specialists, Consultants and Contractors on behalf of City or Authority; the basis for reimbursement shall not be prior payment to Specialists, Consultants and Contractors by Developer. Each such Developer draw request shall include invoices and any other necessary documentation showing good and sufficient documentation of costs and expenses to permit City and Authority to determine the appropriateness of such draw request and, with respect to draw requests during the period of construction of the Public Facilities shall be in the usual and customary form utilized in major construction projects, including a certification by the Architect of the status of completion of the Public Facilities in accordance with the Development Plan. City and Authority shall be entitled to pay such Specialists, Consultants or Contractors directly based on draw requests submitted by Developer in accordance with this section and in each such case shall promptly provide to Developer an accounting of such payments. Each monthly draw request shall be paid by City or Authority within thirty (30) days of submission by Developer to the extent of undisputed sums; provided, however, that if Developer elects to submit "pencil draws" no later than fifteen (15) days in advance of a formal draw request, then City or Authority shall pay the undisputed amount of sums set forth in the formal draw request within fifteen (15) days after submission of the formal draw request by Developer. To the extent that City or Authority dispute in good faith any amount requested pursuant to a draw request, the parties shall endeavor to resolve such dispute promptly.

ARTICLE 9 INSURANCE

9.1. Types of Coverage. Developer, at Developer's expense, shall carry the following insurance coverage insuring Developer throughout the term of this Agreement:

Comprehensive general liability insurance insuring Developer against any and all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Developer, Authority, City and their respective agents, contractors or employees, in connection with the design and construction of the Public Facilities, in the amount of Five Million Dollars (\$5,000,000) for property damage and Ten Million Dollars



(\$10,000,000) for bodily injury or death of persons, or in such larger amounts as may be reasonably acceptable to City.

9.2. **Policy Requirements.** The following general requirements shall apply to the insurance coverage carried by Developer pursuant to Section 9.1:

9.2.1 To the extent available, the policy shall contain a clause whereby the insurer waives all rights of subrogation against Developer, City or Authority;

9.2.2 City and Authority shall be named as an additional insured in all policies obtained by Developer;

9.2.3 Such policies shall be with reputable insurance companies reasonably acceptable to Developer and licensed to do business in the Commonwealth of Virginia;

9.2.4 Developer shall provide City and Authority with policies or certificates of insurance evidencing such coverage prior to the start of construction;

9.2.5 Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium (the cost of which shall be a reimbursable expense pursuant to Section 8.4) shall be provided by Developer to City and Authority; and

9.2.6 The coverages must be non-cancellable unless the carrier provides to City and Authority thirty (30) days' prior written notice of cancellation or ten (10) days in case of cancellation due to nonpayment.

ARTICLE 10

EVENTS OF DEFAULT AND REMEDIES

10.1. **Default by Developer.** The occurrence of any of the following shall be an event of default by Developer under this Agreement:

10.1.1 The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors rights;

10.1.2 The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

10.1.3 The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days;

10.1.4 The failure of Developer to perform or to observe any material covenant, obligation or requirement of this Agreement not specifically named as a default in this Section 10.1, and the continuation of such failure for thirty (30) days after written notice from City or Authority specifying the nature and extent of any such default, or, if such default cannot



reasonably be cured within such thirty (30) -day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default;

10.1.5 The termination of the Franchise Agreement for any reason except the actions of Authority or City or their employees and agents;

10.1.6 The failure by Professional Hospitality Resources, Inc. and/or Bruce L. Thompson to own at least fifty-one percent (51%) of the economic interest in and the voting control of Developer or to participate actively in the management of Developer with respect to the performance of Developer's duties under this Agreement at all times during its term for any reason whatsoever, other than the death or legal disability of Bruce L. Thompson; and

10.1.7 The failure of Developer to have the Public Facilities Completed prior to the "Public Facilities Outside Completion Date" set forth on the Schedule of Project Deadlines attached as Exhibit "G" to this Agreement, unless the delay in completion is attributable to any Force Majeure, Authority or City Delay or the institution of litigation concerning the Project by a third party.

10.2. Default by Authority. The occurrence of any of the following shall be an event of default by Authority under this Agreement:

10.2.1 The filing by Authority of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

10.2.2 The consent by Authority to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

10.2.3 The entering of any order for relief against Authority or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Authority in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days;

10.2.4 Authority's failure to pay or cause to be paid when due any sum of money owed by Authority to Developer pursuant to this Agreement, and the continuation of such failure for fifteen (15) days after written notice from Developer specifying the nature and extent of any such default; or

10.2.5 The failure of Authority to perform or to observe any material non-monetary covenant, obligation or requirement of this Agreement, and the continuation of such failure for thirty (30) days after written notice from Developer specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event; to exceed ninety (90) days after the written notice of default.



10.3. Default by City. The occurrence of any of the following shall be an event of default by City under this Agreement:

10.3.1 The filing by City of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

10.3.2 The consent by City to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

10.3.3 The entering of any order for relief against City or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of City in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days;

10.3.4 The failure of City to perform or to observe any material non-monetary covenant, obligation or requirement of this Agreement, and the continuation of such failure for thirty (30) days after written notice from Developer specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such efforts to Cure to completion, or (ii) to cure such default within a reasonable time after the expiration of: the first thirty (30)-day periods, in no event to exceed ninety (90) days after the written notice of default.

10.4. Remedies. Upon the occurrence and continuance of any event of default described in Section 10.1, Authority or City may elect to terminate this Agreement by giving written notice of such termination to Developer, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination). Upon the occurrence of an event of default described in Sections 10.2 or 10.3, Developer may elect to terminate this Agreement by giving written notice of such termination to the defaulting Party, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of notice of termination), but Authority will be required to pay any portion of the Development Fee owed to Developer under Section 8.1 to Developer at the time of such termination. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided at law or in equity. All remedies under this Agreement shall be cumulative and not restrictive of other remedies.

10.5. Accounting. Upon the termination of this Agreement pursuant to Section 10.4 by reason of a default under Section 10.1, Developer shall render an accounting to City and Authority, and, without diminishing the rights and remedies referred to in Section 10.4, from and after such date none of Developer, City or Authority shall have any further rights or obligations under this Agreement, except that Authority will be required to pay any Development Fee owed to Developer under Section 8.1 at the time of such termination, if any.

10.6. Failure to Obtain Financing. If Developer either (i) fails to have made reasonable progress in the good faith opinion of City toward securing Developer's Financing Commitment by the "Financing Progress Date" set forth on the Schedule of Project Deadlines attached as



Exhibit "G" to this Agreement, or (ii) fails to secure Developer's Financing Commitment to City by the "Outside Financing Commitment Date" set forth on the Schedule of Project Deadlines attached as Exhibit "G", then this Agreement and all the agreements referred to in Section 15.14 shall immediately terminate at the option of City. If City elects to terminate this Agreement and all other agreements pursuant to this Section 10.6, it shall so notify Developer and Authority in writing, and none of City, Authority or Developer shall have any further rights or responsibilities hereunder or thereunder.

10.7. City's Remedies for Failure to Construct and Open Hotel. If Developer:

10.7.1 fails to commence construction of the Project within thirty (30) days after City shall have given Developer the Notice to Proceed in accordance with Section 5.2 of this Agreement;

10.7.2 ceases construction of the Project for thirty (30) consecutive days (excluding periods due to Force Majeure or an Authority or City Delay or a commercially reasonable purpose beyond the reasonable control of Developer provided Developer is pursuing all commercially reasonable efforts to eliminate the cause of such delay and recommence construction);

10.7.3 fails to complete construction of the Project on or prior to the Outside Completion Date (subject to extension for delays due to Force Majeure or an Authority or City Delay); or

10.7.4 fails to open the Hotel to the public, fully fixtured and staffed, no later than two (2) months after the Outside Completion Date (subject to extension for delays due to Force Majeure or an Authority or City Delay);

(any such event being referred to herein as a "Developer Default Event") then, if such Developer Default Event has not been cured within thirty (30) days after City or Authority notifies Developer in writing of such Developer Default Event, City and/or Authority shall have the right to terminate this Agreement (the "Reverter Event"), whereupon (1) if such Default Event is the Developer Default Event described in Section 10.7.1 above: (x) the Air Rights will revert to the Authority, and (y) title to all improvements constructed therein (the "Developer Improvements") will transfer to the Authority without payment of any consideration or other compensation to Developer, subject only to the lien of any first deed of trust held by a "Third Party Institutional Mortgagee" (as defined below); or (2) if such Developer Default Event is a Developer Default Event described in Section 10.7.2, 10.7.3, or 10.7.4 above, (x) the Air Rights will revert to the Authority without payment of any consideration or other compensation to Developer and (y) title to the Developer Improvements will transfer to the Authority, subject only to the lien of any first deed of trust held by Third Party Institutional Mortgagee upon payment by the authority to Developer of the "Reverter Payment". The "Reverter Payment" shall equal (A) an amount equal to ninety-five percent (95%) of the Fair Market Value, as of the date of such termination, of the Developer Improvements constructed to such date, less (B) the sum of (1) the outstanding principal balance (and all accrued by unpaid interest thereon) under the loan secured by the deed of trust held by the Third Party Institutional Mortgagee as of the date of the "Reverter Notice" (as defined below), and (2) the amount of any Development Fee paid to Developer through the



date of such termination. Upon such termination, no further Development Fee should be due or payable to Developer. For purposes of this Section, "Fair Market Value" shall mean the fair market value of the Developer Improvements constructed to such date as determined by mutual agreement reached within twenty (20) days of the date of termination by the Authority or, in the absence of such agreement, by Arbitration.

The rights of the City and Authority shall be a lien on the Air Rights and any improvements constructed thereon (subject only to any first deed of trust held by the Third Party Institutional Mortgagee as provided below) and shall be included in the Deed. However, if any bank, financial institution or other third party institutional lender unaffiliated with Developer or its principals (a "Third Party Institutional Mortgagee") holds a first deed of trust on the Air Rights, the City and/or Authority will provide such Third Party Institutional Mortgagee with written notice (a "Reverter Notice") of the occurrence of the Reverter Event and the right, upon payment to the Authority of the Reverter Payment if the Authority has previously paid such Reverter Payment to Developer, to take over the Project and assume the Developer's rights and obligations under the MDA. The Third Party Institutional Mortgagee must elect to assume within thirty (30) days after the Reverter Notice, recommence construction of the Project within ninety (90) days after the Reverter Notice (subject to extension as maybe be necessary for such lender to obtain relief from any automatic stay in bankruptcy or to diligently pursue foreclosure) and thereafter continuously pursue the Project to completion and open the Hotel. The right of reverter for the City and Authority shall continue to apply following any such assumption by the Third Party Institutional Mortgagee except that the deadlines under items 10.7.1, 10.7.3 and 10.7.4 above will be extended by the period of time from the date of the Reverter Notice to the date such lender recommences construction of the Project. If the Third Party Institutional Mortgagee fails to so assume Developer's obligations, the Authority will take title to the Air Rights subject to the first deed of trust held by the Third Party Institutional Mortgagee for the outstanding principal balance of the loan (and all accrued, but unpaid interest thereon) as of the date of the Reverter Notice. The loan secured by such deed of trust must include the right for the City to pre-pay such loan at any time without penalty in the event the City takes title to the Air Rights subject to such deed of trust unless the City otherwise agrees in advance and in writing. For the purposes of this Section 10.7.4, if the shares of any bank or other financial institution are traded on a public market then it shall not be deemed to be affiliated with Developer regardless of whether any principal or owner of Developer is also a shareholder of such bank or other financial institution. Notwithstanding anything herein to the contrary, any reverter rights of the City and Authority provided herein or provided in the Deed shall expire by their terms upon completion of construction of the Project and the opening of the Hotel.

ARTICLE 11

CLOSING AND CONVEYANCE

11.1. Time and Place of Closing. The closing (the "Closing") shall take place at the offices of the Developer's attorneys, 150 W. Main Street, Suite 2100, Norfolk, Virginia 23510, or at any other location in Norfolk agreed to by the Parties, at 10:00 a.m. on a date (the "Closing Date") which shall be the earlier of either (a) a date mutually satisfactory to Developer and the City or (b) the end of the Pre-Closing Period (the "Outside Closing Date").



11.2. Conditions to the Developer's Obligation to Close. The obligation of the Developer to close hereunder is expressly conditioned upon the fulfillment on or prior to the Closing Date of each of the conditions listed below, provided, however, that the Developer at its election, evidenced by notice delivered to the City and the Authority prior to or at the Closing, may waive any or all of the following conditions:

11.2.1 All representations, warranties and acknowledgments made by the City or the Authority in this Agreement shall be true and correct in all material respects and shall continue to be true and correct in all material respects at the date of Closing.

11.2.2 No laws, statutes, ordinances, governmental orders, regulations, rules or requirements (including but not limited to zoning ordinances or regulations) shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the development or use of the Project as contemplated in this Agreement, or as contemplated in any related agreements to which the City or the Developer is a party.

11.2.3 The Authority shall own good, marketable and insurable fee simple title to the Property, free and clear of all liens, claims and encumbrances.

11.2.4 The Development Plan shall have been approved by Developer, City and Authority in all respects.

11.2.5 The funds required for the payment of the entire cost of the Public Facilities shall have been authorized and appropriated by City by ordinance and a copy of such ordinance shall have been provided by City to Developer.

11.2.6 The City, the Authority and all other applicable governmental agencies shall have given all (i) necessary approvals for the Final Plans and Specifications for the Project, and (ii) such permits and other approvals as are necessary to undertake the construction of the Project.

11.2.7 The Developer's Financing Commitment shall have been obtained and accepted by the Developer and all conditions to the funding of the loan (other than routine conditions relating to the construction disbursement process) shall have been satisfied or waived.

11.2.8 All necessary governmental approvals, registrations and filings with respect to the establishment of the Condominium which may be performed prior to the recordation of Condominium Instruments shall have been obtained or effected.

11.2.9 All covenants, obligations or requirements set forth in this Agreement to be performed prior to the Closing by the City or the Authority, shall have been performed in compliance with this Agreement prior to the Closing Date.

11.2.10 The Other Agreements shall have been completed and executed by the Authority and the City and, if requested by Developer, the Condominium Instruments executed by City or Authority, as applicable, shall be placed in escrow pending substantial completion of the Project.

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11.2.11 Developer shall have received the Notice to Proceed from the City.

11.2.12 All utility work required to be performed by City or the Authority prior to Closing pursuant to this Agreement has been completed.

11.3. Conditions of City's and Authority's Obligation to Close. The obligation of the City and the Authority to close hereunder is expressly conditioned upon the fulfillment on or prior to the Closing Date of each of the conditions listed below, provided, however, that the City and the Authority at their mutual election, evidenced by notice delivered to the Developer prior to or at the Closing, may waive any or all of the following conditions:

11.3.1 All representations, warranties, acknowledgments and covenants made by the Developer in this Agreement shall be true and correct in all material respects, and shall continue to be true and correct in all material respects at the date of Closing.

11.3.2 No federal or state laws, statutes, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the use and development of the Project as contemplated in this Agreement or as contemplated in any related agreements to which the City or Developer is a party.

11.3.3 The Development Plan shall have been approved by Developer, City and Authority in all respects.

11.3.4 The Developer shall have obtained and accepted the Developer's Financing Commitment, shall have executed and delivered the loan documents as required by the Lender and shall have provided to the City and the Authority appropriate evidence thereof and only such post-closing conditions to the funding of the loan as are customary for similar loans shall remain unsatisfied, such as required expenditure of equity funds and submission of appropriate requisitions for disbursement.

11.3.5 The Developer shall have furnished a certificate from the Virginia Board of Contractors or other evidence satisfactory to the City that the General Contractor selected by the Developer to construct the Project is a registered contractor in good standing with the Virginia Board of Contractors.

11.3.6 The Developer shall have furnished and the City shall have approved, such other documentation including the Final Plans and Specifications, schematic drawings and renderings of the Project as may reasonably be requested by City to monitor the orderly development of the Project.

11.3.7 The City and the Authority shall have received and approved a copy of an executed construction contract for the Project and a construction schedule consistent with this Agreement.

11.3.8 The City and the Authority shall have received proof reasonably satisfactory to City and Authority of the insurance required in Article 9.

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11.3.9 The City, the Authority (in their capacities as governmental agencies and not as parties to this Agreement) and all other applicable governmental agencies shall have given all (i) necessary approvals for the Final Plans and Specifications for the Project, and (ii) such permits and other approvals as are necessary to undertake construction of the Project.

11.3.10 All necessary governmental approvals, registrations and filings with respect to the establishment of the Condominium which may be performed prior to the recordation of the Condominium Instruments shall have been attained or effected.

11.3.11 All covenants, obligations or requirements set forth in this Agreement to be performed prior to the Closing by the Developer shall have been performed in compliance with this Agreement prior to the Closing Date.

11.3.12 The Other Agreements shall have been completed and executed by the Developer and, if requested by the City or Authority, the Condominium Instruments executed by Developer shall be placed in escrow pending substantial completion of the Project.

11.4. Failure to Satisfy Conditions. In the event that any of the conditions of the other Party's obligation to close hereunder set forth in Section 11.2 or 11.3 hereof are unsatisfied for any reason, other than Unavoidable Delay, the Developer on the one hand, or the City or the Authority on the other hand, as the case may be, shall be entitled, but not obligated, upon notice delivered to the opposite Party to this Agreement at or prior to the Closing Date, to receive one or more adjournments of the Closing to a date not later than the Outside Closing Date, to enable such Party to satisfy or cause to be satisfied such conditions. If on the Outside Closing Date, any conditions(s) of the obligation of a Party to close hereunder shall remain unsatisfied and has not been waived by such Party, then such Party shall have the right to terminate this Agreement effective upon written notice to the other Parties, and unless the Party entitled to terminate shall waive the applicable conditions(s) as provided above and agree to proceed to Closing hereunder, this Agreement shall terminate, and thereafter, neither Party shall have any further rights hereunder or obligations to the other of any nature hereunder or by reason hereof, except that with respect to a failure to satisfy any condition of the Closing that results from a Party's default under this Agreement, the provisions of this Agreement pertaining to such default, and to the Parties' respective rights, remedies and obligations in connection with such default, shall be applicable in addition to, or (in the non-defaulting Party's discretion) as an alternative to, the non-defaulting Party's aforesaid right of termination.

11.5. Deliveries at Closing by City and Authority. At the Closing, the City and the Authority will deliver to the Developer the following:

11.5.1 An executed and acknowledged special warranty deed conveying the Hotel Site to Developer;

11.5.2 An executed and acknowledged memorandum of this Agreement and right of entry in recordable and insurable form;

11.5.3 A certified copy of the ordinance adopted by the City authorizing the conveyance of the Property pursuant to the terms of this Agreement and the performance by the City of all of its other obligations under this Agreement;



11.5.4 A certified copy of the resolutions adopted by the Board of Directors of the Authority authorizing its entry into this Agreement and the performance by the Authority of all of its obligations under this Agreement;

11.5.5 The separate written opinions of counsel to the City (which may include the City Attorney) and counsel to the Authority, in forms reasonably satisfactory to the Developer and the Lender (assuming all signatures are genuine, and further assuming all documents presented to such counsel as copies conform with the original(s) stating (i) that its client has the legal power and authority to enter into the transactions contemplated by this Agreement (including, without limitation, entry into this Agreement and the Other Agreements); (ii) its client's entry into and performance of this Agreement and the Other Agreements have been duly authorized in accordance with applicable law and their respective chartering documents; and (iii) this Agreement and Other Agreements contemplated hereby and other agreements and documents to be executed and delivered by its client at Closing have been duly executed and delivered by its client, and constitute binding obligation of its client, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratoria or similar laws affecting the enforcement of creditors' rights generally, by legal and equitable limitations on the enforceability of specific remedies, and by such other principles of law or equity by which an enforceability opinion is properly conditioned.

11.5.6 The Other Agreements; and

11.5.7 Any other document or instrument required hereunder or reasonably requested by Developer, the Lender or the Developer's title insurance company in order to consummate the transactions contemplated herein, which document or instrument will be in form and substance reasonably acceptable to City.

11.6. Deliveries at the Closing by Developer. At the Closing, the Developer shall execute and/or deliver to the City and the Authority the following:

11.6.1 Evidence reasonably satisfactory to the City and the Authority that the Developer has been validly formed as a limited liability company and is qualified to do business in the Commonwealth of Virginia and the City of Norfolk;

11.6.2 The written opinion of counsel to the Developer, in form reasonably satisfactory to the City (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals), stating (i) that the Developer is a limited liability company validly existing under the laws of the Commonwealth of Virginia; (ii) that the Developer has the legal power under the Virginia Limited Liability Company Act to enter into the transactions contemplated by this Agreement (including, without limitation, entry into this Agreement); (iii) the Developer's entry into and performance of this Agreement and the Other Agreements have been duly authorized by all necessary limited liability company action; and (iv) this Agreement and enumerated other documents contemplated hereby which are to be executed by the Developer (including, without limitation, the Other Agreements) have been duly executed and delivered by Developer, and constitute binding obligations of the Developer, enforceable in accordance with their terms, except as enforceability

may be limited by applicable bankruptcy, insolvency, reorganizations, moratoria or similar laws affecting the enforcement of creditors' rights generally, by legal and equitable limitations on the enforceability of specific remedies, and by such other principles of law or equity by which an enforceability opinion is properly conditioned;

11.6.3 Resolutions of the members of the Developer, authorizing the signature of the Developer to consummate the transactions contemplated herein in their respective capacities on behalf of Developer, such resolutions to be in form and substance reasonably satisfactory to the City and the Authority and to be accompanied or included in certificates of the Developer;

11.6.4 An assignment of the Developer's rights to use the plans and specification for the Project together with all other due diligence items, such as engineering studies, physical surveys, environmental assessments and the like, necessary for the completion of construction of the Project. Such assignment shall be conditioned upon the occurrence of an Event of Default hereunder which shall be subject and subordinate to any similar assignment made by the Developer to the Lender.

(a) Two copies each of (i) the plan of development for the Project which Developer has submitted to City in accordance with City's zoning regulations, and (ii) the application for the foundation permit for the Project;

(b) Evidence of the closing and funding of the construction loan for the Hotel pursuant to Developer's Financing Commitment;

(c) A certificate of insurance evidencing that Developer has procured all insurance required hereunder;

(d) A certificate from the Virginia Board of Contractors or other evidence reasonably satisfactory to City that the General Contractor selected by Developer and City to construct the Hotel is a registered contractor in good standing with the Virginia Board of Contractors;

(e) A certification by Developer that it has examined the Property and made all investigations it deems reasonably necessary for the performance of its duties hereunder;

(f) An executed copy of the Franchise Agreement;

(g) Such other documentation including the Final Plans and Specifications, schematic drawings and renderings as may reasonably be requested by City to permit the orderly development of the Property;

(h) A copy of a comfort agreement or letter executed by Franchisor whereby Franchisor agrees to approve reasonably acceptable substitute management to operate the Hotel in the event Developer defaults under the first mortgage of the Hotel or the Franchise Agreement; and

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(i) If title insurance is required by Developer's construction lender, a commitment for a title insurance policy insuring such lender in form and substance reasonably acceptable to such lender, and a policy of title insurance insuring City and Authority against filed and unfiled mechanic's liens.

11.6.5 Any other document or instrument required hereunder or reasonably requested by the City or the Authority in order to consummate the transactions contemplated herein, which document or instrument will be in form and substance reasonably acceptable to the Developer.

ARTICLE 12 **ASSIGNMENT**

Authority and City shall have the right to assign their rights and obligations under this Agreement to any government agency or authority, provided such assignee is empowered to perform this Agreement. Except as provided in the preceding sentence, neither Party hereto shall assign or transfer, or permit the assignment or transfer of, this Agreement without the prior written consent of the other Parties, provided, however, that Developer shall have the right to assign its interest herein to any Affiliated Entity. Notwithstanding the provisions of this Article 12, the Parties agree that the Developer shall be permitted to assign this Agreement to any Third Party Institutional Mortgagee providing Developer with financing for construction of the Hotel in accordance with the mortgagee protection agreement (the "Mortgagee Protection Agreement") to be agreed upon by the Parties (which Mortgagee Protection Agreement shall be reasonably acceptable to the Third Party Institutional Mortgagee). A permitted assignment by either Party of its interests in this Agreement shall not relieve the assigning Party from its obligations under this Agreement unless the non-assigning Parties shall expressly consent in writing to any such release; however, Professional Hospitality Resources, Inc. shall be released from liability under this Agreement upon assignment of this Agreement to an Affiliated Entity (and assumption by such Affiliated Entity of all obligations of Developer under this Agreement) and the occurrence of Closing.

ARTICLE 13 **MODIFICATION**

If in connection with obtaining construction or permanent financing for the Hotel, any lender shall request reasonable modifications of this Agreement as a condition to such financing, the Parties will execute a modification of this Agreement, provided such modifications do not materially increase the financial obligations of any Party or material and adversely affect any of the rights created by this Agreement.

ARTICLE 14 **INTENTIONALLY OMITTED**



ARTICLE 15
MISCELLANEOUS

15.1. Waiver. The failure of any Party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by any Party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such Party.

15.2. Severability. If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, unless such invalidity would create undue hardship to Developer, City or Authority, or is essential to the rights of any of them, in which event such Party has the right to terminate this Agreement on written notice to the other Parties.

15.3. Exhibits. Each exhibit referred to in this Agreement is attached to and incorporated by reference in this Agreement.

15.4. Licenses and Permits. In accordance with the provisions of Article 4, it shall be the ultimate responsibility of Developer at Authority's sole expense to secure all local licenses and permits required to be obtained by Developer or Authority with respect to construction, completion and occupancy of the Public Facilities, including any necessary building, occupancy, sewer and utility permits. The City and Authority shall cooperate with Developer and all Contractors in connection with the issuance of these licenses and permits.

15.5. Documents. All as-built drawings, plans, specifications and other documents prepared for Authority or City for the Garage and Conference Center pursuant to this Agreement shall, upon reimbursement by Authority of any costs incurred by Developer with respect to such items pursuant to this Agreement, become or remain the property of City whether or not the Public Facilities are completed; however, Developer may use such drawings, plans, specifications and other documents, or modifications of them, for any other project in which Developer has an interest. Notwithstanding the foregoing, if this Agreement is terminated pursuant to Section 10.6, all drawings, plans, specifications and other documents prepared for Authority or City for the Public Facilities pursuant to this Agreement shall unconditionally become or remain the property of City.

15.6. Intentionally Omitted.

15.7. Approvals. Whenever the approval or consent of a Party is required in this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

15.8. Applicable Law. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia.



15.9. Interpretation. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular Articles or Sections to which they refer.

15.10. "Including". In this Agreement, whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the word "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

15.11. Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice. Upon a change of address by either Party, such Party shall give written notice of such change to the other Party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To City:

City of Norfolk
1101 City Hall Building
Norfolk, Virginia 23510
Attention: City Manager

with a copy to:

City Attorney
900 City Hall
810 Union Street
Norfolk, Virginia 23510



To Authority:

Norfolk Redevelopment & Housing Authority
201 Granby Street
Norfolk, Virginia 23510
Attn: Shurl Montgomery
Executive Director

with a copy to:

Crenshaw, Ware & Martin
150 West Main Street, Suite 1500
Norfolk, VA 23510
Attn: Delphine G. Carnes, Esquire

To Developer:

Professional Hospitality Resources, Inc.
300 32nd Street, Suite 500
Virginia Beach, VA 23451
Attn: Chief Financial Officer

with a copy to:

Vincent J. Mastracco, Jr., Esq.
Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510-1665

15.12. Binding Effect. Subject to the limitations of Article 12, this Agreement shall be binding upon and shall inure to the benefit of Authority, City and Developer and their respective successors and assigns.

15.13. Entire Agreement. This Agreement, together with the agreements to be entered into pursuant to Section 15.14, constitutes the entire agreement between the Parties with respect to the Public Facilities and the Hotel and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by City or Authority and Developer.

15.14. Other Agreements. In addition to this Agreement, City, Authority and Developer shall during the Pre-Development Phase endeavor in good faith to agree upon the forms of the following agreements to be executed at Closing:

15.14.1 The Operating Agreement pursuant to which Developer will manage, operate and maintain the Conference Center for City;

15.14.2 The Deed pursuant to which Authority will convey to Developer the Hotel Site;



15.14.3 The Garage Parking Agreement pursuant to which Authority will make certain parking available to Developer for the use of the Hotel guests;

15.14.4 The Grant Agreement;

15.14.5 The Condominium Instruments;

15.14.6 The Hotel Grant Agreement;

15.14.7 The Mortgagee Protection Agreement.

15.15. Liens. Developer, Authority and City shall use their reasonable good faith efforts to prevent any liens from being filed against the Public Facilities and Related Improvements that arise from any construction, maintenance, repairs, alterations, improvements, renewals, or replacement activities. Developer, Authority and City shall cooperate fully in obtaining the release of such lien (or the "bonding off" of such lien) within thirty (30) days after the date any such lien is filed. The cost to obtain such release or bonding off shall be borne by Developer if caused by the activities of the Developer and shall be borne by City or Authority if caused by the activities of City or Authority.

ARTICLE 16 THE CONDOMINIUM

16.1. The Authority and Developer shall jointly be the declarant of the Condominium.

16.2. The Condominium shall consist of two units, the City's Unit and the Developer's Unit. The City's Unit shall consist of the land component of the Property, the Garage and the Conference Center, excluding the Air Rights, any improvements constructed in the Air Space, the Hotel and the Common Elements. The Developer's Unit shall consist of the Air Rights, any improvements constructed in the Air Space (including, but not limited to, the Hotel), excluding any Common Elements.

16.3. The Common Elements of the Condominium shall consist of the portions of the Property and the improvements constructed thereon, which contain structural elements, utilities or other facilities which serve both of the Units. Every effort shall be made to minimize the portions of the Project which are Common Elements, or in the alternative, to assign to the maximum extent reasonable, the Common Elements to the Units as Limited Common Elements.

16.4. The undivided interests in the Common Elements shall be assigned so that the City's Unit shall have a par value equal to the value of the land component of the Property (unimproved) plus the total of the initial costs (including design, legal, financing and other soft costs) expended by the City or Authority for the design and construction of the Public Facilities, excluding any amounts expended to bring utilities to the Property or to relocate utilities or expended for the Related Improvements, and the par value of the Developer's Unit shall equal the total of the initial costs (including design, legal, financing and other soft costs) expended by the Developer in the construction of the Hotel.



16.5. Each of the City and the Developer shall have an equal vote in all matters coming before the Association on which they, as Unit owners, are entitled to vote. The termination of the Condominium shall require a unanimous vote of the Unit owners.

16.6. The respective obligations of Developer and the City for common expenses (excluding insurance) not allocated to either Unit owner shall be proportionate to the respective par values of the Units.

16.7. The Condominium Instruments shall include or incorporate the respective obligations of the City and the Developer with respect to the use, maintenance, repair and replacement of their respective Units as are set forth in this Agreement.

16.8. The Condominium Instruments shall provide that there shall be a single policy of hazard insurance (special perils form) insuring the entire Building and that the cost thereof shall be specially assessed to the Developer and the City and shall be equitably allocated between them based upon the respective replacement costs and insurance risk and rating factors of their Units and the Limited Common Elements assigned to their Units. The instruments shall provide that any disposition of the insurance proceeds other than to rebuild or restore the Building shall require the approval of the Developer, the City, and their respective lenders, bond underwriter(s), credit enhancer(s) and/or bond trustee(s).

16.9. The Condominium Instruments shall provide that upon termination of the Condominium, the City shall have the option to purchase the Developer's interest in the Condominium property for an amount equal to the fair market value of the improvements in the Developer's Unit.

16.10. The Developer shall release the City and the Authority from, and indemnify and defend the City and the Authority for and against, any claims made by or through the owner of the Developer's Unit arising under the warranty provisions of §55-79.79 of the Act (the "Warranty Provisions"). The City and Authority shall release the Developer from, and indemnify and defend the Developer for and against, any claims made by or through the owner of the City's Unit arising under the Warranty Provisions.

16.11. The Condominium Instruments shall be based upon the condominium documents used in connection with the Wells Fargo Center in Norfolk, Virginia, subject to further mutual negotiation by the Parties.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Master Development Agreement as of the year date set forth above.

**NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY**

By: _____
Name:
Title:

CITY OF NORFOLK

By: _____
Name:
Title:

**PROFESSIONAL HOSPITALITY
RESOURCES, INC.**

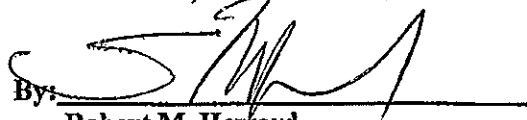
By: 
Robert M. Howard
Chief Investment Officer



EXHIBIT "A"

Parcel One:

An irregular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: Parcel SA-2 as shown on a plat entitled, "Subdivision Plat of Property at 'Selden Arcade' (Doc. #040018795), Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 59 at Page U8A.

The above described parcel contains 0.120 acre of land, more or less.

IT BEING a part of the same property conveyed to City of Norfolk, by deed from Selden Arcade Associates, LLC, a Virginia limited liability company, dated March 29, 2006, and recorded April 24, 2006 in the Clerk's Office of the Circuit Court of City of Norfolk, Virginia, as Document Number 060017841.

Parcel Two:

One: ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon and the appurtenances thereunto belonging, located in the City of Norfolk, Virginia, described as follows:

BEGINNING at the northeast intersection of Main and Concord Streets and running thence eastwardly along the northern side of Main Street one hundred and seventeen and 35/100 feet, more or less, to the western side of Martin's Lane; thence northwardly along the western side of Martin's Lane three hundred and forty-four and 63/100 feet, more or less, to the southern line of Plume Street; thence in a westwardly direction along said southern line of Plume Street, one hundred and fourteen and 55/100 feet, more or less, to the eastern line of Concord Street; thence in a southwardly direction along the eastern line of Concord Street three hundred and thirty-three and 721/100 feet, more or less, to the northern line of Main Street, the point of beginning.

IT BEING the same property conveyed to City of Norfolk, by deed from Branch Banking and Trust Company of Virginia, successor in interest to Life Federal Savings Bank, dated September 20, 2004, and recorded October 4, 2004 in the Clerk's Office of the Circuit Court of City of Norfolk, Virginia, as Document Number 040038323.

Parcel Three:

a. All that certain lot, piece or parcel of land situate, lying and being in the downtown section of the City of Norfolk, Virginia, said parcel being further described as follows: BEGINNING at a point that is the intersection of the northern line of East Main Street and the western line of Concord Street, said intersection being shown on a sketch entitled, "Sketch Showing Proposed Widening of Granby Street Between Main St. & City Hall Ave.," said plat being on file in the Division of Surveys in the Department of Public Works in the City of Norfolk, Virginia, as file 3409; thence, from the point of beginning thus described, 130.56 feet, more or less, northwardly along the western line of Concord Street to a point on the southern line of property now or formerly that of KAK Bute LLC, said southern line also being the northern line of property now or formerly Main Granby Corp as shown on the aforementioned sketch; thence eastwardly and across said Concord Street and perpendicular to said western line of Concord Street, 19.50 feet, more or less, to a point on the eastern line of said Concord Street; thence, southwardly along said eastern line of Concord Street to its intersection with the said northern line of East Main Street; thence, westwardly and across said Concord Street to the point of beginning.

ALTA Commitment This commitment is invalid unless the insuring Page 2 Provisions and Schedule A and B are attached.

b. All that certain lot, piece or parcel of land situate lying and being in the downtown section of the City of Norfolk, Virginia, said parcel being further described as follows: Martins Lane from the northern line of Main Street northwardly to the southern line of East Plume Street.

Parcel Four:

ALL THAT certain lot, piece or parcel of land with the buildings and improvements thereon and all appurtenances thereunto belonging, situate in the City of Norfolk, Virginia, and bounded and described as follows:

Beginning at the intersection of the northern side of Main Street with the eastern side of Granby Street one hundred thirty feet, more or less, to the property now or formerly owned by Alvah H. Martin; thence eastwardly along the property now or formerly owned by Alvah H. Martin to Concord Street; thence southwardly along the western side of Concord Street one hundred thirty feet, more or less, to Main Street; thence westwardly along the northern side of Main Street fifty feet, more or less, to the point of beginning. Said premises are more particularly shown on a plat of survey made by D. Callender, Jr., Assistant Engineer, dated April 19, 1918, in which the dimensions of said premises are shown as follows:

Beginning at the northeast intersection of Granby Street with Main Street, and running thence northwardly along the eastern side of Granby Street one hundred thirty and 51/100 feet, more or less, to the line of the property now or formerly owned by Alvah H. Martin; thence eastwardly along the southern line of said property now or formerly owned by Alvah H. Martin forty-six and 9/100 feet to the western side of Concord Street or Lane; thence southwardly along the western side of Concord Street or Lane one hundred thirty and 45/100 feet to the northern side of Main Street; thence westwardly along the northern side of Main Street fifty and 45/100 feet to the point of beginning.

IT BEING the same property conveyed to City of Norfolk, by Deed in Settlement of Condemnation from Brashear Properties I, LLC, a Virginia limited liability company, dated September 27, 2004, and recorded September 28, 2004 in the Clerk's Office of the Circuit Court of City of Norfolk, Virginia, as Document Number 040037308.

Parcel Five:

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, including that certain building known as the "Dean Building," situated on the southern side of Plume Street in the City of Norfolk, Virginia, and with reference to the plat of a survey of said building made by the Department of Public Works of said City, September 17, 1930, recorded in Map Book 8 at Page 26, bounded and described as follows: BEGINNING at the intersection of the southern line of Plume street with the eastern line of Martin's Lane, and running thence southerly along the eastern side of Martin's Lane, 128.32 feet, more or less, to a point on said eastern line of Martin's Lane where an extension of the southern line of the southern wall of said building would intersect; thence, eastwardly along the southern line of the southern wall of said building (the Northeastern Angle formed by the intersection of said last mentioned line with the eastern line of Martin's Lane being 93°-20') a total distance measured from the eastern line of Martin's Lane of 30.02 feet, more or less, to the eastern line of the eastern wall of said buildings; thence, northwardly along the eastern line of the eastern wall of said building, 131.20 feet, more or less, to the southern line of Plume Street; thence, westwardly 29.63 feet, more or less, along said southern line of Plume Street to the eastern line of Martin's Lane, the point of beginning.

IT BEING the same property conveyed to City of Norfolk, by deed from Peter G. Decker, Jr. and Bess P. Decker, husband and wife, dated January 6, 2005, and recorded January 10, 2005 in the Clerk's Office of the Circuit Court of City of Norfolk, Virginia, as Document Number 050000851.

EXHIBIT B

HOTEL SITE

[to be attached during Pre-Development Phase]

EXHIBIT D
BASE PROGRAM

Hotel

The Hotel will include approximately 300 rooms and it will be a full service hotel suitable for hosting conferences. The Hotel will contain at least three restaurants (one of which may be a lounge) and a unique signature feature. The Hotel shall be franchised by a nationally recognized hotel franchisor of full service hotels such as Hilton, Westin, Crowne Plaza, Hyatt, Intercontinental or Loews or other franchise reasonably acceptable to the City and the Developer. The Hotel will feature valet service, room service, and be technologically supported for business and leisure guests.

Room Type

Double double standard hotel rooms

King

Luxury suites

One and two bedroom presidential suites

Concierge Level

Floor(s) of concierge level rooms and lounge

Restaurants

Specialty restaurant

Bar/Lounge

Additional Restaurant

Conference Center (approximately 100,000 sq. ft. with approximately 50,000 net usable sq. ft.)

Grand ballroom	25,000*
Junior ballroom	9,000*
Meeting/Flex Rooms	<u>16,000*</u>
Total:	50,000*

*indicates approximate amount

The Conference Center will be constructed of a quality comparable to the standards of quality and efficiency found in the Hotel and shall qualify as a IACC top standard

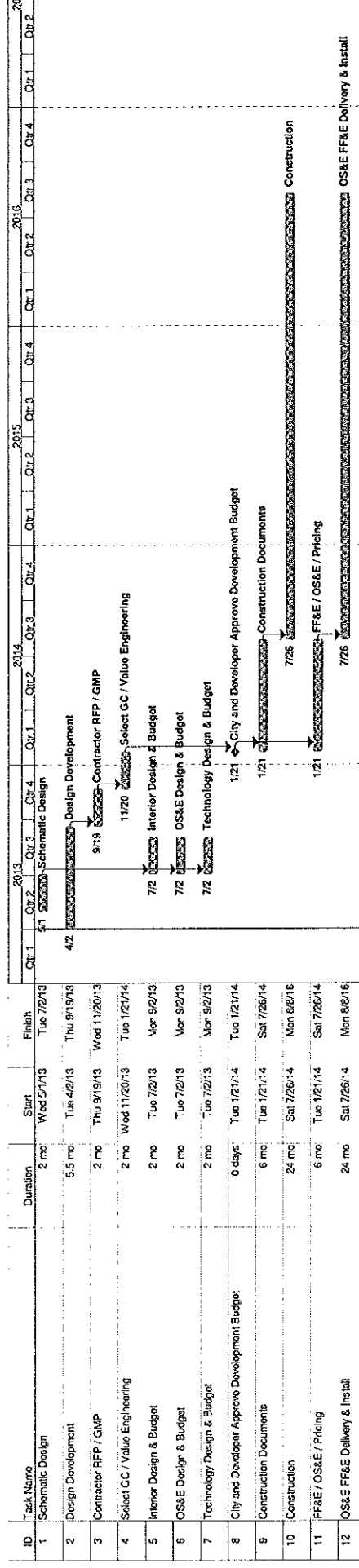
technologically advanced conference center and meet the standards of the U.S. Department of Defense to hold classified government meetings.

Parking Garage

Multi-level garage containing approximately 600 parking spaces. The Parking Garage will be suitable for valet operations.

Exhibit E

NORFOLK HOTEL & CONFERENCE CENTER



* Dates shown above based on preliminary estimates and are subject to change during the Pre-Development Phase as additional information becomes available.

EXHIBIT F

Norfolk Convention Hotel
Pre-Development Cost Summary

	Total Budget	Allocation %		Allocation \$		Deposit 1		Deposit 2	
		Developer	City	Developer	City	Developer	City	Developer	City
Architect & Consultants Fees									
Architect & Consultants	\$1,138,990	50%	50%	\$569,495	\$569,495	\$284,748	\$284,748	\$284,748	\$284,748
Reimbursables	\$170,849	50%	50%	\$85,424	\$85,424	\$42,712	\$42,712	\$42,712	\$42,712
Conference Center Consultant	\$35,000	0%	100%	\$0	\$35,000	\$0	\$17,500	\$0	\$17,500
Real Estate Appraisal	\$25,000	50%	50%	\$12,500	\$12,500	\$6,250	\$6,250	\$6,250	\$6,250
Franchise/Feasibility/Financing	\$35,000	100%	0%	\$35,000	\$0	\$17,500	\$0	\$17,500	\$0
Contingency	\$100,000	50%	50%	\$50,000	\$50,000	\$0	\$0	\$50,000	\$50,000

Total \$1,504,839 **\$752,419** **\$752,419** **\$351,210** **\$351,210** **\$401,210** **\$401,210**

EXHIBIT G

SCHEDULE OF PROJECT DEADLINES

1. Pre-Development Phase Outside Date (1.1, 4.4): November 30, 2013
2. Financing Progress Date (10.6): November 30, 2013
3. Outside Financing Commitment Date (10.6): September 30, 2014
4. Outside City Obligations Date (2.6): September 30, 2014
5. Outside Pre-Closing Period Date (1.1): September 30, 2014
6. Target Completion Date (2.5, 4.5.2): – September 30, 2016 (but in no event less than twenty-four (24) months after Developer receives the Notice to Proceed)
7. Public Facilities Outside Completion Date (10.1 (g)): March 31, 2017 (but in no event less than six (6) months after the Target Completion Date)
8. Outside Completion Date (2.5): March 31, 2017 (but in no event less than six (6) months after the Target Completion Date)

OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is made the _____ day of _____, 20____, between the **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia ("Owner"), and _____ ("Operator").

RECITALS:

A. Owner will be the owner of a conference center facility to be constructed on Main Street in downtown Norfolk, Virginia as more fully described in this Agreement.

B. Operator intends to develop and construct a [Hilton] Hotel of approximately three hundred (300) rooms contiguous to the conference center.

[NOTE: The various references to a "Hilton" Hotel above and throughout this draft are included based on the assumption that the initial Franchise for the Hotel will be Hilton. If another Comparable Brand is the initial Franchise, the name of such Comparable Brand shall be inserted in lieu of the various references to Hilton throughout this Agreement prior to execution at Closing.]

C. Owner desires to have Operator manage and operate the conference center in a high-quality and efficient manner, and Operator is willing to perform such services on behalf of Owner in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1: DEFINITIONS

When used in this Agreement with an initial capital letter or letters, each of the following terms shall have the meaning given it below:

1.1 "Adjusted Gross Revenues" means all revenues and receipts of every kind derived from operating the Conference Center, including the following:

- (i) Income (from both cash and credit transactions) from rental of rooms, stores, offices, exhibit and sales space of every kind;
- (ii) License, lease and concession fees and rentals;
- (iii) Income from vending machines and commercial audio-video equipment rental and services, and income derived from the sale of telephone services;

- (iv) Food and beverage revenues from catering operations with respect to the Conference Center;
- (v) Wholesale and retail sales of merchandise;
- (vi) Service charges; and
- (vii) Proceeds, if any, from business interruption or other loss of income insurance.

Adjusted Gross Revenues shall not include: (i) gratuities, including tips, paid to Conference Center employees by third parties; (ii) federal, state, and municipal excise, sales, and use taxes or similar impositions collected directly from patrons or guests or included as part of the sales price of any rooms, goods, or services; (iii) proceeds of any insurance other than business interruption insurance (or other insurance against loss of income); (iv) condemnation awards; (v) gross receipts received by lessees, licensees or concessionaires of the Conference Center; (vi) proceeds of any judgment or settlement not received as compensation for actual potential loss of Gross Revenues; (vii) interest earned on the Reserve; and (viii) any other income or proceeds that are not derived from the use, occupancy or operation of the Conference Center or from the sale of goods, services or other items solely provided from the Conference Center premises in the ordinary course of business.

1.2 "Agreement" is defined in the preamble to this instrument.

1.3 "Authority" means the Norfolk Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia.

1.4 "Brand Standards" is defined in Section 3.2

1.5 "City" means the City of Norfolk, a municipal corporation of the Commonwealth of Virginia.

1.6 "Commencement Date" means the day the Term of this Agreement begins to run, which shall be the same day the Conference Center is "Completed" as defined in the Master Development Agreement.

1.7 "Conference Center" is defined in Section 2.1.

1.8 "Condominium Instruments" is defined in Section 15.11(c).

1.9 "Development Budget" shall be as defined in Section 1.1 of the Master Development Agreement.

1.10 "Facility" is defined in Section 2.1.

1.11 "FF&E" is defined in subsection 8.2.1(a).

1.12 "Fiscal Year" means City's fiscal year, which now ends on June 30 in any given calendar year. A partial Fiscal Year between the Commencement Date and the first full Fiscal Year, and between the end of the last full Fiscal Year and the Termination of this Agreement shall, for purposes of this Agreement, constitute separate Fiscal Years. If City's fiscal year is changed in the future, then the Fiscal Year under this Agreement shall be changed in the same manner, and Operator and Owner shall make appropriate modifications in the reporting and accounting procedures contained in this Agreement; provided, however, that no such change or adjustment shall alter the Term of this Agreement, or the rights of Owner under this Agreement.

1.13 "Fixed Asset Supplies" means supply items including linen, china, glassware, silver, uniforms and similar items.

1.14 "Franchise Agreement" means the franchise agreement for the Hotel between Operator and [Hilton Corporation] and any subsequent replacement franchise agreement then in effect with respect to the Hotel with [Hilton Corporation] or the franchisor of a "Comparable Brand" (as defined in the Master Development Agreement).

1.15 "Hotel" is defined in Section 2.1.

1.16 "Impositions" is defined in Article 10.

1.17 "Inventories" means "Inventories" as defined in the Uniform System of Accounts, such as provisions in storerooms, refrigerators, pantries and kitchens, beverages in wine cellars and bars, other merchandise intended for sale, fuel, mechanical supplies, stationery and other expense supplies and similar items.

1.18 "Jointly Used Area" is defined in Section 2.1.

1.19 "Major Structural Components" is defined as the Facility's roof, building structure (including exterior walls) and mechanical, electrical, HVAC, plumbing and vertical transportation systems (*i.e.*, elevators and escalators).

1.20 "Major Structural Component Capital Expenditure" is a non-routine capital repair or replacement that extends the useful life of a Major Structural Component. For avoidance of doubt, Major Structural Component Capital Expenditures shall not include maintenance or routine repairs or cosmetic or aesthetic improvements (such as repainting).

1.21 "Master Development Agreement" means a certain Master Development Agreement dated November 29, 2005 by and between Authority, City and Operator, as amended.

1.22 "Mortgage" means any mortgage, deed of trust, deed to secure debt or comparable security instrument encumbering the Conference Center as security for any loan to City or Authority with respect to the Conference Center, regardless of whether such loan is a first priority encumbrance.

1.23 "Mortgagee" means the holder of any Mortgage.

1.24 "Opening Date" means the grand opening date of the Conference Center which shall be established by agreement of Operator and Owner, and in no event shall occur prior to the dates on which the City grants a certificate of occupancy for the Conference Center and the furnishings and operating equipment have been substantially installed therein and all licenses and permits required for the operation of the Conference Center (including liquor, restaurant licenses and Police, Fire, and Health Department permits) have been obtained.

1.25 "Operating Budget" is defined in Subsection 8.2.

1.26 "Operating Committee" is defined in Subsection 3.2.

1.27 "Required Capital Expenditures" means a Major Structural Component Capital Expenditure that is required because the Major Structural Component in question is beyond its functional useful life due to age and the expense and/or frequency of repairs such that an owner thereof who is responsible for maintenance, repair and replacement would elect to incur a Major Structural Component Capital Expenditure with respect to such Major Structural Component in the exercise of its reasonable business judgment in the ordinary course of business or is required in order to maintain the Conference Center to the same level and standards as the Hotel.

1.28 "Reserve" is defined in Subsection 5.3.1.

1.29 "Special Resolution Process" is defined in Section 15.12.

1.30 "Term" means the initial term of this Agreement, as provided in Section 4.1, as the same may be extended pursuant to such Section.

1.31 "Termination" (and similar noun and verb forms of the term) means the expiration of this Agreement at the end of the Term or any earlier termination or expiration of this Agreement in accordance with its terms.

1.32 "Termination Event" is defined in Section 4.2

1.33 "Uniform System of Accounts" means the Uniform System of Accounts for Hotels, 10th Ed. 2006, as published by the Hotel Association of New York City, Inc.

ARTICLE 2: THE CONFERENCE CENTER

2.1 Definition. The "Conference Center" is defined as the 48,830 square feet of conference space, with appurtenant facilities and amenities normally associated with a first class conference center, to be constructed by Operator for Owner in accordance with the provisions of the Master Development Agreement, on Main Street in downtown Norfolk, Virginia in the area described on Exhibit A. For convenience, the entire Conference Center and the "Jointly Used Areas" as defined in the Condominium Instruments will collectively be referred to herein as the "Facility". Operator shall construct a hotel on Main Street contiguous to the Facility pursuant to the terms of the Franchise Agreement and the Master Development Agreement, within the area described on Exhibit B ("Hotel"). The Facility and the Hotel shall be connected internally at one or more levels and will share certain facilities.

ARTICLE 3: APPOINTMENT OF OPERATOR

3.1 Appointment of Operator. Owner appoints and employs Operator as the exclusive operator of the Facility to market, supervise, direct and control management and operation of the Conference Center for the Term in accordance with the terms of this Agreement. Operator accepts said appointment and agrees to manage the Conference Center during the Term in accordance with the terms and conditions of this Agreement and any operating guidelines established pursuant to Section 3.2 of this Agreement, and in accordance with such other reasonable requests that Owner may make from time to time. Subject to the terms of this Agreement, Operator shall be responsible for the first class operation of the Conference Center, including maintenance and repair of the Conference Center, maintenance of standards of operations and quality of service, hiring and employment policies, granting of concessions or leasing of shops within the Conference Center, receipt, holding and disbursement of funds, maintenance of bank accounts, procurement of inventories, supplies and services and, generally, all activities necessary for the operation of the Conference Center. In the performance of its duties as operator of the Facility, Operator shall act solely as an independent contractor and not as an agent of Owner. Nothing herein shall constitute or be construed to be or create a partnership, joint venture or agency relationship between Operator and Owner, and Operator shall have no authority to act as Owner's agent or otherwise bind Owner to any obligations to third parties.

3.2 Operating Committee. Owner will form a committee not to exceed a total of seven (7), which shall include the General Manager of the Hotel, the Hotel Sales Manager, the Conference Center Director, and a representative of Operator to establish marketing philosophies and written operating guidelines for the Conference Center and catering (the "Operating Committee"). Such written guidelines shall be consistent with this Agreement and governed by this Agreement. The written operating guidelines shall: (i) establish guidelines to reflect Operator's responsibility to treat equally all groups using or desiring to use the Conference Center and to show no preference in favor of Hotel guests or other groups; (ii) establish policies and procedures to encourage joint marketing and booking and general cooperation between the Conference Center and the conference facilities attached to the nearby Marriott Waterside that enhance the event levels and overall economic impact of events to the community; and (iii) contain such other specific operating guidelines as are reasonably necessary to protect Owner's interest in the Conference Center, including the guidelines addressing public standards of decency and morality, provided that such guidelines shall not interfere with Operator's ability to maintain the operating standards referenced in the last sentence of this paragraph. The initial guidelines shall be those set forth on a Schedule to this Agreement and such guidelines shall remain applicable until such time as they may be modified by the Operating Committee. In addition, the Operating Committee shall be consulted respecting the overall rate structures in regards to Conference Center space and charges for catering in the Conference Center; however, Owner and Operator agree that Operator will consistently charge rates that are competitive with other hotel/conference centers that routinely bid against the Hotel and the Facilities (and the nearby Marriott Waterside and related conference facilities) for association and corporate event activity. Notwithstanding the foregoing, Operator agrees to allow the City to host up to five (5) city/civic events not exceeding one day each in duration at the Facility per calendar year and that the rates and charges for such events will be set at a "break-even" level. Operator shall operate the Conference Center in a manner that complies with all applicable laws, ordinances and regulations. Owner may, from time to time, propose to Operator that such guidelines and rates be

amended, as the Owner may deem appropriate, and Operator shall give due consideration to the Owner's proposals. Operator shall operate and maintain the Conference Center in accordance with the operating standards of [Hilton] and under the [Hilton] brand as outlined in the Franchise Agreement executed between Operator and [Hilton] and typically applicable to facilities of similar type and size to Conference Center, or in the event of a change in brand affiliation, the operating standards and brand of a replacement Comparable Brand Franchisor (the "Brand Standards").

3.3 Approvals. The Operator shall obtain all governmental licenses, permits, decrees, orders or other approvals necessary for the occupation and operation of the Conference Center. Owner shall cooperate with Operator in such efforts as may be reasonably necessary.

3.4 Satisfaction Surveys. In order to monitor the Operator's performance under this Agreement and the satisfaction level of customers and event attendees of the Conference Center, Owner shall have the right to conduct surveys of customers and event attendees from time to time, and Operator agrees to cooperate with Owner in connection with any such surveys.

ARTICLE 4: TERM

4.1 Term. The initial term of this Agreement shall commence on the "Commencement Date" and, unless sooner Terminated as provided in this Agreement, shall, continue for a period ending on June 30 of the calendar year in which the thirtieth (30th) anniversary of the Commencement Date occurs. Following the expiration of the initial term, this Agreement shall, unless terminated pursuant to the provisions of this Agreement, continue in force and be automatically extended for up to two (2) successive ten (10) year renewal terms except if Owner disapproves of such extension as set forth below, with each such renewal term to commence on the first day of July immediately succeeding the expiration of the prior term and continuing through June 30 of the tenth succeeding year; provided that Operator may elect to not renew this Agreement for any reason provided that notice of such non-renewal is given not later than nine (9) months prior to the expiration of such initial or renewal term; and provided further that Owner shall only have the right to disapprove either of the two (2) successive ten (10) year extensions by notice of such disapproval given not later than six (6) months prior to the expiration of the initial or renewal term, which notice may only be given if an uncured Termination Event then exists or if a Termination Event has occurred three or more times within the five (5) year period preceding the extension (regardless of whether such Termination Event was subsequently cured pursuant to the provisions of Section 4.2 below).

4.2 Termination for Cause. If at any time during the Term of this Agreement, Operator fails to operate the Conference Center and/or the Hotel as an ongoing business concern (except for reasonable periods of non-operation due to fire or other casualty, condemnation or Force Majeure, in which event Operator shall recommence operations as soon as is reasonably practicable), Owner may terminate this Agreement without damages or further liability to Operator immediately upon written notice to Operator. In addition, Owner may terminate this Agreement without damages or further liability to Operator upon thirty (30) days prior written notice to Operator in the event of the occurrence of any one or more of the following events (each a "Termination Event"):

(i) Operator's failure to comply with the guidelines established by the Operating Committee from time to time pursuant to Section 3.2 of this Agreement, including the guidelines relating to joint marketing and booking and general cooperation between the Conference Center and the conference facilities attached to the nearby Marriott Waterside;

(ii) Operator's failure to operate the Hotel and/or the Conference Center in accordance with the standards of the Franchise Agreement (the "Brand Standards") (Operator agrees to obligate the Franchisor under the Franchise Agreement to provide copies of all notices of violation of Brand Standards to Owner);

(iii) Operator and/or the Conference Center receive consistently low or unsatisfactory ratings or there is a material decline in the ratings levels of the Operator's performance and/or customer satisfaction levels under any surveys conducted by the franchisor under the Franchise Agreement (or, if the surveys conducted by such franchisor do not adequately address the maintenance, cleanliness and quality of service with respect to the Conference Center, then under any surveys conducted by Owner pursuant to Section 3.4 of this Agreement through an independent, third party survey and/or conference center consulting firm); and/or

(iv) If, at any time after the third year of the term of this Agreement, net revenues (adjusted for any governmental incentives or discounts) per square foot at the Convention Center are at a materially lower level than corresponding net revenues (adjusted for any governmental incentives or discounts) per square foot levels at other hotels/conference centers that routinely bid against the Hotel and Facilities (and the nearby Marriott Waterside and related conference facilities) for association and corporate event activities.

If, however, the Operator, in good faith, disputes the occurrence of the Termination Event or believes that the conditions giving rise to the Termination Event can be rectified in a reasonable period of time (not to exceed one hundred eighty (180) days) such that this Agreement should not be terminated, and if the Operator notifies Owner thereof within the thirty (30) day period following Owner's termination notice, the matter shall be referred to the Special Resolution Process outlined in Section 15.12 to determine whether a Termination Event has occurred and if such event can be remedied. If the Expert determines that a Termination Event has not occurred, this Agreement shall remain in effect. If the Expert determines that the conditions giving rise to the Termination Event can be remedied, the determination of the Expert shall include specific recommendations as to how to rectify the conditions and a reasonable cure period to remedy the conditions. If the actions recommended by the Expert are not taken and/or the conditions are not remedied within the cure period specified by the Expert, Owner may terminate this Agreement without damages or further liability to Operator immediately upon written notice to the Operator.

ARTICLE 5: OPERATING REVENUES AND EXPENSES; IMPROVEMENTS; OWNER'S CAPITAL EXPENDITURES

5.1 Operating Revenues and Expenses. Operator shall receive all Gross Revenues and, except as otherwise provided in this Agreement (including Section 5.5 below), incur all expenses relating to the Conference Center, including the costs of (i) maintenance, repairs and

replacements of the Facility, (ii) Conference Center employees (including salaries, wages, fringe benefits and payroll taxes), (iii) advertising and business promotion, (iv) utilities, insurance and other general operating expenses, and (v) replacing Inventories and Fixed Asset Supplies consumed in the operation of the Conference Center. When the same become due, Operator shall pay the Impositions and Jointly Used Area Fees, if any, unless payment is being contested and enforcement of such Impositions and Jointly Used Area Fees is stayed.

5.2 Accounting. Upon the termination or non-renewal of this Agreement, Operator shall render an accounting to Owner and shall deliver to Owner all funds of Owner held in bank accounts maintained by Operator as deposits or advanced payments for events to be held or goods or services to be provided subsequent to Termination and all books, records and material relating to the operation, management and booking of the Conference Center. Operator shall coordinate with any successor manager of the Conference Center to provide for a smooth transition in the management and operation of the Conference Center.

5.3 FF&E and Building Maintenance Reserve.

5.3.1 (a) Operator shall establish an interest bearing reserve account (the "Reserve") in a bank, savings and loan association or other institution selected by Operator and approved by Owner, with the interest earned on such reserve account being reportable to Owner's employer identification number, to cover the costs of the following:

(i) Replacements and renewals to, or refurbishment of, the fixtures, furniture, furnishings, and equipment installed or located in the Conference Center consistent with the standards established for the Conference Center by this Agreement and for the Hotel and/or Conference Center by the Franchise Agreement and all applicable laws and regulations (the "FF&E"); and

(ii) Non-routine repairs, alterations, maintenance, refurbishment and replacements to the Facility consistent with the standards established for the Conference Center by this Agreement and for the Hotel and/or Conference Center by the Franchise Agreement and all applicable laws and regulations, such as exterior and interior repainting, resurfacing building interior walls, floors, and replacing folding walls and the like and major repairs that are normally capitalized such as alterations, improvements, renewals or replacements to the Facility or to its mechanical, electrical, heating, ventilating, air conditioning, plumbing or vertical transportation systems.

(b) The Reserve shall be funded quarterly with four percent (4%) of the Adjusted Gross Revenues, such amount to be used to fund amounts budgeted for items of FF&E in the FF&E and CapEx Budget. At Operator's option, Operator may elect to reduce the amount contributed to the Reserve to (i) one percent (1%) of the Adjusted Gross Revenues from the Opening Date until the end of the first full Fiscal Year, and (ii) two percent (2%) of the Adjusted Gross Revenues during the second full Fiscal Year. Thereafter, four percent (4%) of the Adjusted Gross Revenues shall be contributed to the Reserve as provided above. All amounts from time to time in the Reserve and all interest on such amounts shall be held in escrow by an agent chosen by Operator reasonably satisfactory to Owner pursuant to an escrow agreement reasonably satisfactory to Owner and Operator (and subject to all reasonable requirements of the

first mortgage lender on the Hotel) for the benefit of Owner and Operator to be applied in accordance with the terms of this Agreement.

5.3.2 Operator shall from time to time make such substitutions, replacements or refurbishments of or renewals to, FF&E and such repairs, alterations, maintenance and refurbishments to the Facility of the nature described in Subsection 5.3.1 as are provided for in the FF&E and Cap Ex Budget for such Fiscal Year, as described in Subsection 5.3.3, with Operator having the right to expend funds from the Reserve pursuant to such approved FF&E and Cap Ex Budgets. At the end of each Fiscal Year, any amount then remaining in the Reserve shall be carried forward to the next Fiscal Year.

5.3.3 Operator shall prepare an annual estimate of the expenditures necessary for (1) replacement and renewal or refurbishment of the Conference Center's FF&E, (2) building repairs and other expenditures of the nature contemplated by Subsection 5.3.1 during the ensuing Fiscal Year and (3) any Required Capital Expenditures as contemplated by Subsection 5.5 below proposed by Operator, whether such expenditures are contained in the Five Year Capital Expenditure Plan (as defined in Subsection 5.3.4) or are necessitated by unforeseen events or conditions. Operator shall submit such estimate to Owner for Owner's review and approval in connection with, and as a part of, submission of the Preliminary Operating Budget described in Section 8.2. Following Owner's approval of the Operating Budget for a Fiscal Year, such Operating Budget shall constitute the "FF&E and Cap Ex Budget" for such Fiscal Year. However, Owner's approval of the Operating Budget shall not be deemed to constitute Owner's agreement to perform or pay for all or any portion of any Required Capital Expenditures, such obligation of Owner to be determined pursuant to Section 5.5 below and not Operator's budgetary process for the Conference Center.

5.3.4 To assist Owner in forecasting possible Required Capital Expenditures, Operator shall prepare a "Five-Year Expenditure Plan" containing all anticipated Required Capital Expenditures and Owner's share of such expenditures for submission to Owner each year beginning when the need for Required Capital Expenditures begins to arise (the Parties contemplating that Major Structural Component Capital Expenditures shall not be required for at least the first ten (10) years of the Term). Thereafter, Operator shall update the Five-Year Expenditure Plan on an annual basis.

5.4 Building Alterations, Improvements, Renewals and Replacements. Operator, using funds in the Reserve but otherwise at Operator's expense, shall have the responsibility and authority to control and coordinate any and all routine maintenance and all other work provided in Subsection 5.3.1. above within the limits provided in Subsection 5.3.3. above. Following Owner's approval of the FF&E and Cap Ex Budget, Operator shall cause such alterations, improvements, renewals and replacements to be made as mutually agreed upon by Owner and Operator.

5.5 Owner's Capital Expenditures. Notwithstanding any of the terms of this Agreement, Owner shall be responsible to pay for (to the extent funds from the Reserve are not available for such purpose as provided below) Owner's applicable share of Required Capital Expenditures relating to Major Structural Components of the Facility. Amounts in the Reserve not specifically earmarked for other items (such as replacement of FF&E) and those amounts

specifically earmarked for Required Capital Expenditures may be applied towards the Owner's applicable share of Required Capital Expenditures. Owner's share of Required Capital Expenditures relating to the Conference Center will be one hundred percent (100%), and Owner's share of Required Capital Expenditures relating to the Jointly Used Areas will be Owner's share of the cost of construction of such Jointly Used Areas set forth in the Development Budget. Owner reserves the right to perform (using its own forces or through third parties) any Required Capital Expenditure for which Owner pays any portion of the cost thereof pursuant to this Agreement. Should Owner exercise such right, it shall proceed with diligence and dispatch to complete the required work as soon as possible in accordance with good construction practices so as to minimize any disruption of activities at the Convention Center.

5.6 Liens. Operator and Owner shall use their reasonable good faith efforts to prevent any liens from being filed against the Facility that arise from any maintenance, changes, repairs, alterations, improvements, renewals, or replacement in or to the Facility. Operator and Owner shall cooperate fully in obtaining the release or "bonding off" of any such lien within thirty (30) days after the date any such lien is filed against the Facility, and the cost to obtain such release or bonding off shall be paid by Operator if caused by the activities of Operator, and shall be paid by Owner if caused by the activities of Owner. Any lien that has been appropriately "bonded off" shall be deemed to have been released.

5.7 Ownership of Replacements. All changes, repairs, alterations, improvements, renewals or replacements to the Facility and the FF&E made pursuant to this Article 5 shall be the property of Owner. Upon Termination, Operator shall surrender the Facility and the then-existing FF&E, together with all Inventories and Fixed Asset Supplies, to Owner in good condition and repair, ordinary and reasonable wear and tear accepted.

ARTICLE 6: BOOKING.

6.1 Booking the Facility. While the Operator shall be responsible for marketing the Conference Center, the City of Norfolk Convention and Visitor's Bureau and others may also market the Conference Center, and, therefore, Operator will, from time to time upon reasonable requests from Owner, grant to Owner a limited license to use Operator's intellectual property relating to the Conference Center as may be reasonably necessary for the marketing thereof by Owner. The Operator shall be responsible for booking the Conference Center, and Owner shall not be entitled to actually book events for the Conference Center except through the Operator. Operator acknowledges and agrees that the Convention Center is a public facility available for booking by third parties, and Operator and Owner agree to cooperate in good faith to coordinate bookings with other hotels and convention centers in the City of Norfolk and to maximize bookings for the Conference Center and room nights for the Hotel and other hotels in the City of Norfolk.

6.2 Booking Hotel Rooms. Operator and Owner agree as follows with respect to bookings for Hotel rooms where the Conference Center is also booked:

6.2.1 With respect to event bookings twelve (12) or fewer months in advance of the booking date, Operator shall have untrammelled discretion over room rates and availability for rooms at the Hotel.

6.2.2 For events requiring blocks of four hundred (400) or more citywide rooms and with respect to which City has timely notified Operator, Operator will make available fifty percent (50%) of the Hotel's rooms for event bookings twelve (12) to twenty-four (24) months in advance of the Booking Date, and seventy-five percent (75%) of the Hotel's rooms for event bookings more than twenty-four (24) months in advance of the Booking Date, at group room rates not more than one hundred ten percent (110%) of the Hotel's group average daily rate established for the Booking Fulfillment Date. "Booking Date" shall mean the date on which a group enters into a written agreement with the Hotel for the use of the block of rooms and delivers such initial deposit as may be required pursuant to such agreement. "Booking Fulfillment Date" shall mean the date for which the group has contracted with Operator to occupy the Hotel, in fulfillment of the aforesaid written agreement.

6.2.3 Notwithstanding anything in the foregoing to the contrary, Operator shall not be obligated to make available rooms for Conference Center events for more than fourteen (14) event nights per month, or make available any rooms for which Operator has bona fide reservation contracts with unaffiliated parties in place at the time of the Booking Date. Upon Operator accepting bookings at the fourteen (14) event nights threshold, Operator may reject any further business during such month. For purposes of this Subsection 6.2.3, only nights for which the four hundred (400) or more citywide rooms are required will be counted as "event nights", it being understood that move in days will be counted and move out days will not be counted as "event nights" for purposes of this provision. Owner and Operator shall cooperate in good faith to coordinate bookings at the Hotel so as to maximize bookings at the Hotel and Conference Center.

6.2.4 The provisions of this Section 6.2 shall survive the Termination of this Agreement and remain binding upon the owner of the Hotel notwithstanding any assignment or Termination of this Agreement.

ARTICLE 7: MAINTENANCE, REPLACEMENTS AND CHANGES

7.1 Repairs and Maintenance. Operator shall, as its sole cost and expense except as otherwise provided pursuant to the provisions of Section 5.5 of this Agreement (and the corresponding definitions of the terms therein), make or cause to be made all such maintenance, repairs, refurbishment, replacement and alterations reasonably necessary to maintain the Facility in good repair and condition consistent with the standards established for the Conference Center by this Agreement and for the Hotel and/or the Conference Center by the Franchise Agreement, the terms of any Mortgage (provided that Owner has provided Operator with written notice thereof) and all applicable laws and regulations. Operator's obligations under this Section 7.1 shall apply to all required maintenance, repairs, refurbishment, replacement and alterations, interior and exterior, structural and non-structural, ordinary and extraordinary, however the need for same occurs and shall be made promptly and be at least equal in quality and class to the original work. Proceeds of the Reserve shall be applied towards the cost of certain non-routine repairs, refurbishment, replacement and alterations as more particularly provided under Section 5.3 above.

ARTICLE 8: BOOKKEEPING, EXPENDITURES AND BUDGETING

8.1 Books and Records. Operator shall keep books of control and account for the Hotel and the Facility in accordance with generally accepted accounting principles and the Uniform System of Accounts. Such books of control and account shall be kept at the Conference Center or the Hotel. Owner (itself or through its designated agents) may, at any time during Operator's normal business hours, examine or audit such records and may make copies of such books or take extracts from such books. Within sixty (60) days following the close of each Fiscal Year, Operator shall furnish Owner an unaudited statement certified by the chief accounting officer of the Conference Center, which summarizes the Conference Center operations for such Fiscal Year, in detail reasonably sufficient to permit Owner to monitor Operator's performance as compared to the Operating Budget and to meet any other ordinary needs of Owner related to accounting, including a summary of Gross Revenues with respect to such Fiscal Year.

8.2 Annual Operating Budget. On or before the first day of January of each calendar year, Operator shall prepare a preliminary operating budget (the "Preliminary Operating Budget") with respect to the next succeeding Fiscal Year and shall submit the same to Owner for its review and approval. Each Preliminary Operating Budget shall include projections, in reasonable detail, of Gross Revenues and expenses for the next succeeding Fiscal Year for the Conference Center. Each such Preliminary Operating Budget shall also include estimates of the expenditures contemplated in Subsection 5.3.1 (the FF&E and CapEx Budget) for the next succeeding Fiscal Year and estimates of Required Capital Expenditures pursuant to Section 5.5 for the next succeeding Fiscal Year. Such Preliminary Operating Budget shall be reviewed by Owner, shall be revised as Owner may reasonably request, and shall, upon Owner's approval, constitute the approved Operating Budget for the forthcoming Fiscal Year. However, as provided in Subsection 5.3.3 above, Owner's approval of the Operating Budget shall not constitute Owner's agreement to perform or pay for all or any portion of any Required Capital Expenditures, Owner's obligations with respect thereto being determined pursuant to Section 5.5 of this Agreement. In addition, any amounts to be paid by Owner with respect to Required Capital Expenditures for the next succeeding Fiscal Year must be agreed upon by the Parties no later than the January 31 immediately preceding such Fiscal Year so that the necessary amounts can be incorporated into Owner's budgetary process.

(a) Owner objects to any portion of the Preliminary Operating Budget, Owner shall be specific as to the category to which Owner is objecting. Owner will provide Operator with the specific reasons for its disapproval with Owner's written objection, and the parties will attempt to resolve, in good faith, any objections within the thirty (30) day period following Owner's objection. Owner shall have only have the right to object to any item in the Preliminary Operating Budget if such item (i) involves a reduction in expenditures in any category that would, in Owner's reasonable opinion, have deleterious effects on the operations of the Conference Center or the maintenance of its first-class status as contemplated by this Agreement, (ii) involves a request for payment by Owner for Required Capital Expenditures (Owner's obligations with respect thereto being determined to Section 5.5 of this Agreement), or (iii) involves expenditure of funds which would constitute a violation of the Franchise Agreement, the Brand Standards or applicable law. In any event, Owner shall not withhold its consent to any budget items payable by Operator that are required to maintain the Franchisor service standards for the Conference Center.

(b) In the event Owner and Operator fail to resolve any of Owner's objections within such thirty (30) day period, all matters shall be referred to the Special Resolution Process for resolution in accordance with the provisions of Section 15.12 hereof. However, Owner and Operator expressly agree that any disagreement regarding Required Capital Expenditures shall not be subject to the Special Resolution Process and shall be determined in accordance with Section 5.5 of this Agreement. Pending such Special Expert determination, Operator shall operate the Conference Center with respect to those categories of the Preliminary Operating Budget that are in dispute based on the previous Fiscal Year's Operating Budget with respect to such categories, adjusted in accordance with (1) the percentage increase in the CPI from the first day of the Fiscal Year just ended, and the first day of the Fiscal Year for which the Preliminary Operating Budget is in dispute and (2) anticipated changes in Gross Revenues to the extent that increases in Gross Revenues would reasonably be expected to impact such category.

(c) Owner acknowledges that (i) the Operating Budget is intended by Operator to be an estimate of income and expenditure only; (ii) Operator does not give any guarantee, warranty or representation whatsoever in connection with any Operating Budget, other than that Operator prepared the Operating Budget in good faith and in accordance with the provisions of this Agreement; and (iii) a failure of the Conference Center to achieve any Operating Budget shall not in and of itself constitute an Event of Default or breach by Operator hereunder. It is understood, however, that the Operating Budget is an estimate only and that unforeseen circumstances such as, but not limited to, the costs of labor, material, services and supplies, casualty, operation of law, or economic and market conditions, as well as the requirement that the Conference Center be operated in accordance with any subsequent changes in the Hotel Franchise Agreement, may make adherence to the Operating Budget impracticable. Operator shall include with each accounting statement provided to Owner a comparison of the actual results with the budgeted results.

(d) Operator shall, from time to time during each Fiscal Year as it deems appropriate, make revisions to the Operating Budget for such year for Owner's review and approval, and Owner may, from time to time, in response to Operator's suggestions or at its own initiative, modify and revise the Operating Budget for the then current Fiscal Year, in its reasonable discretion.

8.3 Review of Operating Losses. If at the end of the first three (3) full Fiscal Years and each five (5) Fiscal Year period thereafter, the Operator has sustained an operating loss with respect to its operation of the Conference Center for the applicable period (after factoring in all sources of Gross Revenues from the Conference Center, including catering revenues), Owner and Operator will enter into good faith negotiations regarding modifications to this Agreement for the purpose of preventing the Operator from continuing to sustain an economic loss as a result of operating the Conference Center.

ARTICLE 9: INSURANCE

9.1 Property Insurance.

9.1.1 Operator shall procure and maintain, at minimum, the following property insurance with insurance companies approved by Owner and licensed to do business in the

Commonwealth of Virginia, having a Best's rating of not less than A- (or its commercially reasonable equivalent):

(a) Insurance on the Facility (including contents) against loss or damage by fire, lightning and all other risks covered by the usual standard extended coverage endorsements, with deductible limits approved by Owner, providing coverage in an amount not less than the replacement cost of the Facility ;

(b) Insurance against loss or damage from explosion of boilers, pressure vessels, pressure pipes and sprinklers, installed in the Conference Center or the Facility, to the extent applicable;

[NOTE: Article 9 may need to be modified to comply with the Condominium Instruments]

9.1.2 All policies of insurance required under Subsection 9.1.1 shall be carried in the name of Operator, Owner, the Mortgagee, and any other appropriate party designated by Owner or Operator, and such policies shall provide that any losses shall be payable to the parties as their respective interests may appear. All such policies shall be in such forms as are usual and customary and otherwise reasonably satisfactory to Owner and to the Mortgagee. Owner and Operator shall waive all rights of claim against each other, to the extent that such claims have been paid by any insurance policies referenced in this Article 9.

9.2 Operational Insurance. Operator shall procure and maintain, at a minimum, the following insurance with insurance companies approved by Owner and licensed to do business in the Commonwealth of Virginia, and having a Best's rating of not less than A- (or its commercially reasonable equivalent):

(a) Workers' compensation and employer's liability insurance as may be required under applicable laws covering all of Operator's employees at the Conference Center, with such deductible limits as are approved by Owner;

(b) Comprehensive General Public Liability insurance (including protective liability coverage on operations of independent contractors engaged in construction, operation, or management, blanket contractual liability insurance, liquor law legal liability insurance and products liability insurance), on an "occurrence" basis, for the benefit of Owner and Operator, both as named insureds, and in an amount jointly approved by Owner and Operator, against claims for personal injury liability, including without limitation, bodily injury, death or property damage liability; and

(c) Such other insurance, if requested by Owner, as Owner in its reasonable judgment deems advisable for protection against claims, liabilities and losses arising out of or connected with the operation of the Conference Center.

9.3 Coverage. All insurance described in Sections 9.1 and 9.2 may be obtained by Operator by endorsement or equivalent means under its blanket insurance policies, provided that such blanket policies are satisfactory to and approved by Owner. In addition, all insurance

described in Sections 9.1 and 9.2 may be obtained by Operator under a policy or policies covering both the Facility and the Hotel.

9.4 Policies and Endorsements.

9.4.1 Where permitted, all insurance provided for under this Article 9 (other than property damage insurance on the Conference Center) shall name Operator and Owner as coinsured. All insurance maintained by Operator under this Article 9 shall be pursuant to such forms as are reasonably satisfactory to Owner. The party procuring such insurance shall deliver to the other party certificates of insurance with respect to all policies so procured, including existing, additional and renewal policies and, in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies not less than ten (10) days prior to the respective dates of expiration.

9.4.2 All policies of insurance provided for under this Article 9 shall, to the extent obtainable, contain an endorsement that such policy shall not be cancelled or changed without at least thirty (30) days' prior written notice to Owner. Operator shall not cancel or alter any insurance policy maintained pursuant to this Article 9 without the prior consent of Owner.

9.4.3 The amount of each insurance policy provided for under this Article 9, the insurance company issuing such policy, the deductible limits for each such policy, and the premium for such policy shall all be subject to the approval of Owner, which approval shall not be unreasonably withheld.

9.5 Indemnification. Operator shall indemnify, defend and hold harmless City and City's agents and employees from and against any and all claims, demands, actions, damages, liabilities and expenses (including reasonable attorney's fees) in connection with loss of life, bodily injury, personal injury or property damage that occurs at the Facility (unless the foregoing results from City's negligence or willful misconduct) or results from the Operator's negligence or willful misconduct or breach of this Agreement. The obligations of Operator under this Section that accrue or are incurred while this Agreement is in effect shall survive the Termination of this Agreement.

ARTICLE 10: IMPOSITIONS; COMMON ASSESSMENTS

10.1 Impositions. When the same become due, Operator shall pay all real estate or ad valorem property taxes, assessments, inventory, and personal property taxes and similar charges on or relating to the Facility ("Impositions"), if any, following or allocable to the period following the Operating Date, unless payment is being contested and enforcement of such Impositions is stayed. Operator shall also, no later than thirty (30) days prior to the date payment is due or three (3) days following the written request from Owner, furnish Owner with copies of official tax bills and assessments.

10.2 Jointly Used Areas Fees. When the same become due, Operator shall pay all common area charges, fees and assessments, if any, payable in connection with the Facility under the Condominium Instruments, including payment of any fees relating to the use and/or maintenance of the Jointly Used Areas (the "Jointly Used Areas Fees").

ARTICLE 11: CONFERENCE CENTER EMPLOYEES

11.1 Employment in Discretion of Operator. Operator shall have the discretion and obligation to hire, promote, supervise, direct, train, transfer, discipline and terminate the employment of all employees at the Conference Center, to fix their terms of compensation, and generally to establish and maintain policies relating to employment at the Conference Center. Operator shall use good faith efforts to hire a diverse workforce and to hire employees from the City of Norfolk. All such employees shall at all times be the employees of Operator and not of Owner, and, subject to Owner's right to give Operator reasonable suggestions and direction concerning the appearance and performance of such employees, Owner shall have no responsibility or control respecting such employees. Operator shall hire a director for the Conference Center with adequate prior conference center management experience and with sound and reputable moral character. Owner shall have the right to approve the Conference Center Director, which approval shall not be unreasonably withheld. If Operator desires to change the director, Operator shall give Owner at least thirty (30) days prior notice of such change (unless circumstances reasonably warrant the change in a shorter period of time). Operator shall hire a new director, if any, subject to the approval of Owner, which approval shall not be unreasonably withheld.

11.2 Gratuitous Services and Amenities. Operator shall be permitted to provide gratuitous services and amenities to its employees and guests in accordance with the usual practices of the hotel and conference center industry.

ARTICLE 12: DAMAGE AND CONDEMNATION

12.1 Damage and Repair.

12.1.1 With respect to whether Owner is required to perform restoration work, the following shall apply:

(i) If the Conference Center has been damaged or destroyed by fire or other insurable casualty and all of the following are true:

(a) the Conference Center can, in Owner's reasonable judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty causing the loss or damage within the earlier to occur of (A) eighteen (18) months after the receipt of insurance proceeds or condemnation awards by either Operator or Owner, and (B) the natural expiration of the Term (including all renewal terms); and

(b) all necessary governmental approvals can be obtained to allow the timely rebuilding and reoccupancy of the Conference Center; and

(c) there are sufficient sums available through insurance proceeds for such restoration or repair (including, without limitation, for any costs and expenses of Owner to be incurred in administering said restoration or repair); and

(d) such damage or destruction shall not allow the termination of the Franchise Agreement under the terms thereof or, if such termination is allowed, Operator has

obtained and delivered to Owner evidence satisfactory to Owner that such right to terminate has been waived by [Hilton] (or any replacement Comparable Brand Franchisor permitted by the Master Development Agreement); and

(e) the Hotel was not damaged or the Operator provides Owner with agreements and other evidence establishing to the Owner's satisfaction that any damage to the Hotel will be repaired and restored;

then Owner shall solely for the purposes of such restoration or repair, advance so much of the insurance proceeds as may be required for such restoration or repair, and any funds deposited by Operator therefor, to Operator in the manner and upon such terms and conditions as would be reasonably prudent, including, but not limited to, the prior approval by Owner of plans and specifications, contractors and form of construction contracts and the furnishing to Owner of permits, bonds, lien waivers, invoices receipts and affidavits from contractors and subcontractors in form and substance satisfactory to Owner.

(ii) In all other cases, Owner may elect, in Owner's discretion, to restore or repair the Conference Center in the manner and upon such terms and conditions as would be prudent with the insurance proceeds available therefor.

12.1.2 If Owner does not elect to repair or restore the Facility, then this Agreement shall Terminate upon written notice from Owner to Operator.

12.2 Condemnation.

12.2.1 If all or substantially all of the Conference Center is taken in any eminent domain, condemnation, compulsory acquisition or similar proceeding by any competent authority for any public or quasi-public use or purpose ("Taking"), then this Agreement shall Terminate as of the date Operator ceases to have physical possession of the Conference Center ("Date of Taking").

12.2.2 If a portion of the Conference Center shall be taken ("Partial Taking") by the events described in Subsection 12.2.1 or if the entire Conference Center is affected on a temporary basis ("Temporary Taking") but the result is not to make it unreasonable to continue to operate the Conference Center, then this Agreement shall not Terminate.

ARTICLE 13: DEFAULT

13.1 Default by Operator. The occurrence of any of the following shall be an event of default by Operator under this Agreement:

(a) The filing by Operator of a voluntary proceeding under present or future bankruptcy, insolvency, other laws respecting debtors' rights;

(b) The consent by Operator to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(c) The entering of an order for relief against Operator or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Operator in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days;

(d) The failure of Operator to perform or to observe any covenant, obligation or requirement of this Agreement, and the continuation of such failure for thirty (30) days after written notice from Owner specifying the nature and extent of any such default, or, if such default is of a type that may be cured but it cannot reasonably be cured within such thirty (30)-day period, the failure to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such efforts to cure to completion, with such time to cure in no event exceeding ninety (90) days after the written notice of default;

(e) The termination of the Franchise Agreement (or any successor Franchise Agreement entered into with a permitted "Franchisor" in accordance with the terms of the Master Development Agreement) for any reason except the actions of Owner and its employees and agents and the failure of the Operator to enter into a successor Franchise Agreement with a permitted Franchisor in accordance with the terms of the Master Development Agreement such that continued operation of the Hotel under a permitted Franchise Agreement is not interrupted;

(f) The termination of the Master Development Agreement as a result of a material default of Operator.

13.2 Default by Owner. The occurrence of any of the following shall be an event of default by Owner under this Agreement:

(a) The filing by city of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(b) The consent by Owner to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(c) The entering of an order for relief against Owner or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Owner in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days;

(d) Owner's failure to pay when due any sum of money owed by Owner pursuant to this Agreement, and the continuation of such failure for ten (10) days after written notice from Operator specifying the nature and extent of any such default;

(e) The failure of Owner to perform or to observe any nonmonetary covenant, obligation or requirement of this Agreement, and the continuation of such failure for thirty (30) days after written notice from Operator specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure to commence to cure such default within such thirty (30)-day period and to diligently

continue to pursue such efforts to cure to completion, with such time to cure in no event exceeding ninety (90) days after the written notice of default.

(f) The termination of the Master Development Agreement as a result of a material default of Owner.

13.3 Remedies. Upon the occurrence and continuance of any event of default described in Sections 13.1 or 13.2, the non-defaulting party may elect one or more of the following remedies:

(a) To pay whatever amount or perform whatever act the defaulting party failed to pay or to perform, for and on behalf of the defaulting party, and the defaulting party shall reimburse the non-defaulting party immediately upon demand for any sums thus paid and all costs and expenses incurred in connection with the making of such payment or the proper performance of any such act, together with interest on such sum, costs and expenses at the lesser of (i) the interest rate allowed by the applicable usury laws or (ii) at the then prime rate of interest as published by the Wall Street Journal, plus three percent (3%), from the date that such payment is made or such costs and expenses incurred; and

(b) To terminate this Agreement by giving written notice of such termination to the defaulting party, and this Agreement shall terminate as of the date specified in such Agreement (which date shall be on or after the date of the notice of termination). In addition to the remedies described above, the non-defaulting party shall have available to it all other rights and remedies provided at law or in equity. All remedies under this Agreement shall be cumulative and not restrictive of other remedies.

ARTICLE 14: ASSIGNMENT

14.1 By Operator. Operator shall have the right to assign this Agreement and to delegate its responsibilities under this Agreement in their entirety to any entity controlled by or under common control with Operator and in which Operator or any direct or indirect principal of Operator owns an equity interest, directly or indirectly; however, in the event of any such assignment, Operator shall remain liable for all obligations of Operator under this Agreement. Operator shall have the right to assign this Agreement and to delegate its responsibilities under this Agreement in their entirety, to any successor owner to whom the Hotel is sold provided such successor owner is an approved franchise operator for [Hilton] (or any other Franchisor permitted under the Master Development Agreement), in which event Operator shall be relieved and released from its obligations under this Agreement upon such assignment and the assumption by such successor owner of all obligations of Operator under this Agreement. Any assignment under either of the foregoing circumstances shall require at least thirty (30) days' prior written notice to Owner. Except as so provided, Operator shall not assign this Agreement or delegate its responsibilities under this Agreement, without the prior written consent of Owner. Notwithstanding any provision to the contrary, Operator shall have the right to delegate its responsibilities under this Agreement to any party which is managing the Hotel.

14.2 By Owner. In the event Authority conveys or leases the Conference Center to City, such lease or conveyance shall be made subject to this Agreement, and Authority shall

assign this Agreement to City. Upon such assignment and the assumption by City of Authority's obligations under this Agreement, Authority shall be released from all liability and responsibility hereunder, and Developer shall attorn to City pursuant to this Agreement.

ARTICLE 15: MISCELLANEOUS

15.1 Waiver. The failure of either party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by either party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such party.

15.2 Severability. If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, unless such invalidity would create undue hardship to Operator or Owner, or is essential to the rights of either party, in which event such party has the right to Terminate this Agreement on written notice to the other party.

15.3 Exhibits. Each exhibit referred to in this Agreement is attached to and incorporated by reference in this Agreement.

15.4 Approvals. Whenever the approval or consent of a party is required in this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

15.5 Applicable Law. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia.

15.6 Headings. Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular Articles or Sections to which they refer.

15.7 Including. In this Agreement, whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the word "including" (or other forms of the word "include") shall be deemed to mean "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

15.8 Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given

shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To Owner:

Norfolk Redevelopment & Housing Authority
201 Granby Street
Norfolk, Virginia 23510
Attn: Shurl Montgomery
Executive Director

With a copy to:

Crenshaw, Ware & Martin
1200 Bank of America Center
Norfolk, Virginia 23510
Attn: Howard W. Martin, Jr. Esquire

With a copy to:

City Attorney
900 City Hall
810 Union Street
Norfolk, VA 23510

To Operator:

Attention: _____

With a copy to:

Attention: _____

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

15.9 Binding Effect. Subject to the limitations of Article 14, this Agreement shall be binding upon and inure to the benefit of Owner and Operator and their respective successors and assigns.

15.10 Entire Agreement. This Agreement, together with the agreements to be entered into pursuant to Section 15.11, constitutes the entire agreement between the parties hereto with respect to the Conference Center and the Hotel and supersede all prior understandings and writings, and may be amended or modified only by a writing signed by Owner and Operator.

15.11 Other Agreements. In addition to this Agreement, Authority, City and Operator are entering or have previously entered into the following related agreements:

(a) The Master Development Agreement pursuant to which Operator is to provide certain development services for the Conference Center and commits to construct and open the Hotel;

(b) The Garage Parking Agreement pursuant to which parking will be made available to Operator for the use of the Hotel guests;

(c) The Condominium Instruments to be developed pursuant to Section 2.7 of the Master Development Agreement;

(d) The Mortgagee Protection Agreement, to be executed by Authority and City for the benefit of Operator and the Mortgagees.

15.12 Special Resolution Process. Where a matter is to be referred to a Special Resolution Process for determination, the following provisions shall apply to such process:

(A) Resolution of the matter or dispute being referred for resolution (the "Special Resolution Process") shall be the sole and exclusive remedy available to the parties with respect to such matter or dispute. Absent manifest error, the decision of the Expert, as hereinafter defined, shall be final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise. The failure of either party to adhere to the decision of the Expert shall constitute an event of default hereunder.

(B) The parties will observe in all respects, the terms and provisions of this Section 15.12 and any attempt to circumvent the terms shall be null and void. Upon the occurrence of a matter to be referred to the Expert (an "Expert Resolution Dispute"), either party may notify the other that a matter or dispute exists and in the event that the parties have been unable to resolve such matter or dispute within thirty (30) days, either party may give notice ("Expert Notice") to the other party of submission of such dispute to the Special Resolution Process set forth herein.

(C) For purposes of this Section 15.12, the term "Expert" shall mean an individual employed by an independent, nationally recognized conference center consulting firm who is qualified to resolve the issue in question, having at least ten (10) years experience in the subject matters in question. The Expert shall be appointed in each instance by agreement of the parties or, failing agreement, each party shall select one (1) such individual and the two (2)

individuals so selected shall select another qualified individual to be the Expert. Each party agrees that it shall not appoint an individual as an Expert hereunder if the individual is, as of the date of appointment or within three (3) years prior to such date, employed by such party, either directly or as a consultant, in connection with any matter.

(D) In the event that either party calls for an Expert determination pursuant to the terms hereof, the parties shall have ten (10) days from the date of delivery of the Expert Notice to agree upon an Expert and, if they fail to agree, each party shall have an additional ten (10) days to make its respective selection of a qualified individual, and within ten (10) days of such respective selections, the two individuals so selected shall select another qualified individual to be the Expert. If either party fails to make its respective selection of a firm or individual within the ten (10) day period provided for above, then the other party's selection shall be the Expert. If the two (2) individuals so selected shall fail to select a third qualified individual to be the Expert, then such Expert shall be appointed by the American Arbitration Association.

(E) Each party shall be entitled to make written submissions to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission provided such submissions are made within thirty (30) days of selection of the Expert(s) (the "**Submissions Period**"). The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties. The cost of the Expert and the proceedings shall be borne as directed by the Expert unless otherwise provided for herein.

(F) The terms of engagement of the Expert shall include an obligation on the part of the Expert to: (i) notify the parties in writing of the Expert's decision within thirty (30) days after the expiration of the Submissions Period (or such other period as the parties may agree or as set forth herein); (ii) apply the standards applicable to conference centers in first-class hotels and in all events, consistent with the requirements of the Franchise Agreement; and (iii) apply strictly the applicable provisions of this Agreement.

(G) No party, or anyone acting on its behalf, shall have *ex parte* communications with any Expert concerning any matter of substance relating to the matter at issue.

15.13 Estoppel Certificates. Owner and Operator will, at any time and from time to time within fifteen (15) days of the request of the other party or a Mortgagee, execute, acknowledge and deliver to the other party and such Mortgagee, if any, an instrument certifying the following:

(a) That this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating such modifications);

(b) Whether there are any existing defaults by the other party to the knowledge of the party making such certification specifying the nature of such defaults, if any; and

(c) Such other matters as may be reasonably requested.

Any such certificate may be relied upon by any party to whom the certificate is directed.

15.14 Time of Essence. Time is of the essence of this Agreement.

15.15 Force Majeure. Neither party shall be liable for any failure to perform its nonmonetary obligations under this Agreement due to any cause beyond its reasonable control, such as war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, Acts of God, or any other cause or contingency similarly beyond its control.

15.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

15.17 Memorandum. A Memorandum of this Agreement in form reasonably satisfactory to Owner and Operator shall be recorded in the land records of the City of Norfolk, Virginia. Such Memorandum shall also be recorded in the chain of title to the Hotel and shall specifically state that Operator and its successors as the owner of the Hotel parcel shall be bound only by Section 6.2 of this Agreement. Owner will pay any recording taxes or fees required in connection with recording such Memorandum.

TO WITNESS THIS AGREEMENT, Owner and Operator have caused this Agreement to be executed and sealed by their respective officers.

**NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY**

By: _____ [SEAL]
Name: _____
Title: _____

By: _____ [SEAL]
Name: _____
Title: _____

PRELIMINARY

GARAGE PARKING AGREEMENT

THIS GARAGE PARKING AGREEMENT ("Agreement") is made as of the ____ day of _____, 2008, by and among the NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia ("Authority"), and _____, a Virginia limited liability company ("Developer").

RECITALS:

A. Authority, Developer and the City of Norfolk, a municipal corporation of the Commonwealth of Virginia ("City") are all parties to that certain Master Development Agreement dated November 29, 2005, as amended (the "MDA"), which MDA sets forth the development plan for that certain real property located in Norfolk, Virginia, and described in Exhibit A attached hereto (the "Property").

B. In accordance with the MDA, Developer shall construct on the Property, on behalf of Authority, a multilevel parking garage containing approximately six hundred eleven (611) spaces ("Garage") and a conference center consisting of approximately 48,830 gross square feet (the "Conference Center"). In addition, Developer plans to construct on the Property a [Hilton] Hotel containing approximately three hundred (300) guest rooms (the "Hotel").

[NOTE: The various references to a "Hilton" Hotel above and throughout this draft are included based on the assumption that the initial Franchise for the Hotel will be Hilton. If another Comparable Brand is the initial Franchise, the name of such Comparable Brand shall be inserted in lieu of the various references to Hilton throughout this Agreement prior to execution at Closing.]

C. Considerable economic benefit is expected to accrue to Authority and City from the operation of the Conference Center, Hotel and Garage, and Authority is therefore desirous to cooperate with Developer.

D. The effective operation of the Hotel by Developer requires that sufficient parking be located in the immediate vicinity of the Hotel and be made available to Developer at a competitive cost on a long-term basis.

E. Authority is agreeable to providing Developer, and any successor thereof, with parking provided herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Provision of Parking

During the Term of this Agreement, Authority shall provide Developer parking in the Garage subject to the following conditions:

(a) (i) Parking capacity in the Garage sufficient to accommodate up to a maximum of one hundred fifty (150) vehicles per day (the "Maximum Allocated Amount") will be made available by Authority to be set aside and allocated to Developer on a daily basis to provide parking for guests of the Hotel pursuant to this Agreement. The parties acknowledge that the Garage will be a public facility and that Developer and hotel guests will be entitled to use parking spaces in the Garage that are made generally available to the public on a non-exclusive, unreserved, first-come, first-served, open occupancy basis as provided under Paragraph 2(d) below, but that Authority's obligation to set aside parking capacity in the Garage to be available for use by Developer for parking for the Hotel shall be limited to capacity sufficient to accommodate the Maximum Allocated Amount (subject to the terms of this Agreement). However, the Parties further acknowledge that the availability of such "open occupancy" parking shall not serve to diminish the Authority's obligation to provide parking capacity sufficient to accommodate the Maximum Allocated Amount for Developer's Use in accordance with the terms of this Agreement. In consideration of, and as a condition to, Authority's obligation to set aside parking capacity in the Garage sufficient to accommodate the Maximum Allocated Amount, Developer agrees to use the Garage as the primary source of parking for all valet and Hotel-validated guest self-parking serving the Hotel.

[NOTE: The 150 vehicles referenced above and below is based on 300 hotel rooms and a .5 vehicles per room ratio. In the event the final plans for the Hotel call for more or less than 300 hotel rooms, the Maximum Allocated Amount will be adjusted based on the foregoing ratio; however, the Maximum Allocated Amount shall not exceed 165.]

(ii) If during any calendar year after the fifth (5th) full calendar year of the Term of this Agreement the average Daily Allocated Parking Capacity (as defined below) per day for such calendar year is less than seventy-five percent (75%) of the then-current Maximum Allocated Amount, the Maximum Allocated Amount shall be reduced by ten percent (10%) of the then-current Maximum Allocated Amount commencing as of the following calendar year through the balance of the Term of this Agreement (subject each calendar year thereafter to further adjustment based on the foregoing or as otherwise provided in this Section 1(a)). For example, if in calendar year 2015 the Maximum Allocated Amount is 150 vehicles and the average Daily Allocated Parking Capacity per day was less than 113 (75% of the 150 vehicle Maximum Allocated Amount), the Maximum Allocated Amount would be reduced to 135 vehicles (150 vehicles less 10%) commencing with calendar year 2016 through the balance of the Term, and if in calendar 2016, the average Daily Allocated Parking Capacity per day was less than 102 (75% of the new 135 vehicle Maximum Allocated Amount), the Maximum Allocated Amount would be reduced to 122 vehicles (135 vehicles less 10%, rounded up to the nearest whole number) commencing with calendar year 2017 through the balance of the Term (subject to further reduction if the 75% threshold is not met in subsequent calendar years).

(iii) If during any calendar year after any reduction in the Maximum Allocated Amount has occurred pursuant to Section 1(a)(ii) above, the average Daily Allocated Parking Capacity per day for such calendar year is greater than ninety percent (90%) of the then-current Maximum Allocated Amount, the Maximum Allocated Amount shall be increased by ten

percent (10%) of the then-current Maximum Allocated Amount (but in no event to exceed the initial [150 vehicle] Maximum Allocated Amount) commencing as of the following calendar year through the balance of the Term (subject to further adjustment based on the foregoing or as otherwise provided in this Section 1(a)).

(iv) If during any calendar year after the fifth (5th) full calendar year of the Term of this Agreement the average Daily Allocated Parking Capacity per day for such calendar year is greater than one hundred twenty-five percent (125%) of the then-current Maximum Allocated Amount, the Maximum Allocated Amount shall be increased by ten percent (10%) of the then-current Maximum Allocated Amount commencing as of the following calendar year through the balance of the Term of this Agreement (subject each calendar year thereafter to further adjustment based on the foregoing or as otherwise provided in this Section 1(a)).

(v) If during any calendar year after any increase in the Maximum Allocated Amount has occurred pursuant to Section 1(a)(iv) above, the average Daily Allocated Parking Capacity per day for such calendar year is less than ninety percent (90%) of the then-current Maximum Allocated Amount, the Maximum Allocated Amount shall be decreased by ten percent (10%) of the then-current Maximum Allocated Amount commencing as of the following calendar year through the balance of the Term (subject each calendar year thereafter to further adjustment based on the foregoing or as otherwise provided in this Section 1(a)).

(b) Subject to the following provisions, up to the Maximum Allocated Amount of parking capacity in the Garage shall be set aside and allocated, on an as-needed basis for Hotel-operated valet parking and Hotel-validated guest self-parking. The Authority and Developer shall work together in good faith to provide for the efficient operation of the Hotel-operated valet parking service and otherwise provide for the smooth and efficient operation of the garage for Hotel guests and other Garage patrons. Developer shall notify Authority in writing of the total vehicle parking capacity required for any given day (such amount not to exceed the Maximum Allocated Amount), and such notice shall be given no less than seven (7) days prior to the earliest of the days for which notice is being given. In the occasional event that seven (7) days prior notice is not practicable for a given day, Authority shall make every reasonable attempt to accommodate Developer's parking needs for Hotel guests on such day (up to the Maximum Allocated Amount). The number of vehicles for which parking capacity is designated for allocation to Developer pursuant to this subparagraph for each day of the Term shall hereinafter be referred to as the "Daily Allocated Parking Capacity". The total number of vehicles actually parked in the Garage through either Hotel-operated valet parking or Hotel-validated guest self-parking on each day of the Term shall hereinafter be referred to as the "Daily Utilized Parking," it being agreed that any single Hotel-validated guest that enters the Garage in any given 24-hour period shall be deemed a single "vehicle" for purposes of this calculation regardless of whether such vehicle makes multiple exits and entrances. For purposes of calculating the monthly invoice as set forth in subparagraph (d) below, Developer shall be charged each day of the Term for the Daily Utilized Parking for the day in question, such amount being hereinafter referred to as the "Daily Invoiced Parking".

(c) Any of the Maximum Allocated Amount of parking capacity that has not been designated for allocation to the Hotel pursuant to subparagraph (b) above may be made available by Authority to the general public (including Hotel guests) for transient parking on a non-exclusive, unreserved, first-come, first-served, open occupancy basis as provided under Paragraph 2(d) below. Developer specifically understands that maximum utilization of all parking spaces is extremely important to Authority and City, and Developer covenants to do all things reasonably necessary to permit Authority and City to obtain such maximum utilization, including regular and timely notification of Authority, based on occupancy, of the portion of the Maximum Allocated Amount Developer expects to be used for parking for Hotel guests. On any given day, Authority shall have no obligation to make available to Developer or Hotel guests any parking not designated for allocation by Developer as Daily Allocated Parking Capacity.

(d) Authority shall provide a monthly invoice to Developer by the tenth (10th) day of each month setting forth the amount due from Developer for the Daily Invoiced Parking for the month immediately preceding the date of the invoice (the total of all such Daily Invoiced Parking for the month in question being hereinafter referred to as the "Monthly Invoiced Parking"). The amount of each such monthly invoice shall be equal to the Monthly Invoiced Parking for the month in question multiplied by the then-current Parking Fee (as defined below). Payment of such invoices shall be payable thirty (30) days after receipt thereof by Developer.

(e) The Term of Authority's obligation to provide parking under this Agreement shall commence on the date the Hotel opens for business to the public, and shall terminate on that date which is thirty (30) years after the commencement date. Developer shall have the right to extend the Term for two (2) successive ten (10) year extension terms exercisable by Developer no later than nine (9) months prior to the expiration of the Term (or the expiration of the term of each extension term, as the case may be). A memorandum of this Agreement may be recorded in the land records of the City of Norfolk, Virginia.

(f) As of the date of this Agreement, the Parking Fee for the Daily Invoiced Parking is Fourteen and 00/100 Dollars (\$14.00) per vehicle parked per day. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Parking Fee may be increased from time to time by written notice from Authority to Developer in amounts proportionate to rate increases enacted by the City Council of the City for comparable City or Authority facilities; however, Authority agrees that such rates shall not exceed the standard rates charged to other hotels by City or Authority in other comparable City or Authority owned garages from time to time.

(g) For transient short-term parking activity, Developer agrees to pay the posted hourly rate which will be consistent with hourly rates in effect from time to time in other City-owned and operated parking facilities. The hourly charge will be applied to each vehicle based on the length of stay and will be paid by the individual user, Developer or Developer's agents and employees. Charges for short-term activity can be invoiced monthly using a validation system that will be integrated with the Garage or may be charged individually for each transaction. The Authority and Developer agree to work together in good faith to provide for the efficient operation of the Garage as well as mutual accountability of financial transactions.

(h) The Authority agrees to install and cause to be operated a technologically enhanced Parking Access and Revenue Control System. This system will be designed to facilitate and simplify both self-parking guests and valet operations and billing functions to the extent possible. Developer agrees to cooperate in all reasonable respects with Authority and use such systems as Authority may reasonably adopt from time to time, after consulting with Developer, in order to ensure proper accountability and operations of the Garage and to track actual use of parking spaces and the number of vehicles parked in the Garage, so long as such systems are generally consistent with those used in other comparable City or Authority owned garages to track similar uses of parking. Developer agrees to, and agrees to cause its agents, employees and contractors to, use good faith in the use and administration of any such systems in order to insure that each vehicle parked in the Garage through either Hotel-operated valet parking or Hotel-validated guest self-parking is accounted for pursuant to the terms of this Agreement. Developer acknowledges and agrees that attempts by Developer, its agents, employees or contractors to circumvent such tracking systems and park additional vehicles without payment therefor, if not immediately remedied after written notice from Authority to Developer, shall give Authority the right to increase the Parking Fee to one-hundred fifty percent (150%) of the Parking Fee that would have been payable by Developer if Developer's use of the Garage had been properly accounted for as determined by Authority. In addition, if such circumvention activities persist such that Authority notifies Developer thereof more than two (2) times in any twelve (12) consecutive month period, Authority shall have the right to terminate this Agreement if such circumvention activities do not cease within ten (10) days after third written notice from Authority to Developer or immediately upon written notice from Authority to Developer if such circumvention activities recommence at any time thereafter during the balance of such twelve (12) consecutive month period.

2. Design, Operation and Use

(a) In accordance with the MDA, Developer, with the cooperation and assistance of Authority and City, will design and build, or cause to be designed and built, the Garage prior to the first day the Hotel is open for business to the public.

(b) Authority or its designated operator shall operate the Garage with all services and facilities normally associated with comparable public parking areas in the City of Norfolk.

(c) Authority shall allow unimpeded and open access to Hotel guests to and from the Garage at all times, i.e., twenty-four (24) hours per day, seven (7) days per week, including holidays.

(d) In addition to the Daily Allocated Parking, other parking spaces will be available on a non-exclusive, unreserved, self-parking, first-come, first-served, open-occupancy basis subject to such short-term and daily rates as the City establishes.

(e) The Authority agrees to individually number the spaces in the Garage and to provide a clear signage system throughout the Garage to assist with hotel operations both for

self-parking guests and valet operations. Based on the final design of the Garage, the Authority shall also designate the lower levels as short-term parking (including short-term valet parking) and the upper levels as overnight (including overnight valet parking) and monthly parking.

(f) Upon giving reasonable notice to Developer, Authority or its designated operator may restrict access to the Garage for the performance of necessary repairs or maintenance and such repairs or maintenance shall be completed as quickly as reasonably possible. If requested by Developer, Authority will use reasonable efforts to provide replacement parking during such maintenance and repairs at other parking facilities owned by Authority or City, and such facilities will be located as conveniently to the Hotel as reasonably possible.

(g) Use of the Garage by Developer, its agents, employees, contractors and guests shall be subject to such reasonable rules and regulations as Authority may adopt from time to time. Authority shall reasonably and equitably enforce such rules and regulations.

3. Maintenance and Repair

(a) Authority shall maintain the Garage, or contract for the maintenance thereof, at all times in good order and condition, clean and free of rodents, in accordance with maintenance standards employed at comparable public parking areas in the City of Norfolk, so that the Garage shall comply with all building codes, ordinances, regulations, and laws of any governmental authority having jurisdiction thereof. Authority shall be responsible for maintenance and repair of the Garage and shall pay all charges for water, sewer, gas, electricity and other utilities. The term "maintenance" shall include, but not be limited to, painting, operation, inspection, testing, repair, replacement of mechanical, electrical or similar components and/or cleaning the Garage, including any of its elevators and appurtenant facilities.

(b) In the event of any damage or destruction of all or any portion of the Garage, Authority shall undertake promptly to repair or rebuild the Garage to provide as promptly as reasonably possible after the date of such damage or destruction, the Maximum Allocated Amount of parking.

(c) Authority shall provide and maintain interior and exterior illumination sufficient to illuminate the Garage and all means of pedestrian and vehicular access and egress thereto and therefrom, during all twilight and evening hours of operation.

(d) Authority shall provide suitable and sufficient signs in and around the Garage as required for safe and orderly flow of pedestrian and vehicular traffic, including signage directing garage users to appropriate Hotel entrances and on any general directories provided by Authority in the Garage. Any signs pertaining to hotel operation will be subject to Developer's approval, such approval not to be unreasonably withheld.

(e) Authority shall have the right to make and complete, using high quality workmanship and materials, such replacements, repairs, alterations and improvements to the Garage as it deems necessary or desirable in connection with the aforementioned usage consistent with applicable zoning laws.

(f) In performing maintenance, Authority shall use reasonable efforts to interfere as little as possible with the use, occupation and enjoyment of the Garage by Developer. If possible, maintenance shall be confined to the area actually being so maintained.

4. Tax Liability

The provisions of this Agreement shall not be deemed to require Developer to pay, by whatever name called, income or receipts or excess profits taxes assessed against City or Authority, or any capital levy, rent, gift or transfer taxes incurred by City or Authority, pertaining to the ownership or operation of the Garage.

5. Title to Property; Memorandum

(a) Authority covenants that it has full right to enter into this Agreement as of the date hereof and the Authority is or will be seized in fee simple of and have good and marketable title to the Property and any improvements thereon, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent Authority from performing its obligations hereunder.

(b) A memorandum of this Agreement in form reasonably satisfactory to Authority and Developer may be recorded by Developer in the land records of the City of Norfolk, Virginia. Developer will pay all recording taxes or fees required in connection with recording such memorandum.

6. Interest; Attorneys' Fees

If Developer fails to pay Authority any amounts payable under this Agreement when due, following receipt by Developer of notice thereof from Authority, such past-due payments shall bear interest from the date due until paid at the rate of twelve percent (12%) per annum. In the event of any litigation between Authority and Developer arising out of this Agreement, the substantially-prevailing party in such proceedings shall be entitled to recover from the other party all reasonable costs and expenses (including court costs and reasonable attorney's fees) incurred in connection with such litigation.

7. Insurance; Liability

(a) Developer shall carry, at its own cost, comprehensive public liability insurance as required by Developer's Franchise Agreement for the Hotel, insuring Authority, City and Developer against claims from injuries or death sustained by Hotel guests or employees or damage to their property while using the Garage or on the Property.

(b) City and Authority shall not be liable to Developer or Developer's employees, agents or contractors for any injury, damage, compensation or claim directly or indirectly relating to or arising out of any use of the Garage by Developer for the storage of Developer's equipment, or the parking of Developer's owned vehicles.

(c) Developer agrees to indemnify, defend and hold harmless City and Authority and their respective officers, agents and employees from and against any and all costs, damage, claims, liability or expense (including reasonable attorneys' fees) incurred by or claimed against City or Authority, directly or indirectly, as a result of or in any way arising out of the use of any areas contained within the Garage structure which are used in common by the Hotel (i.e., loading docks), as defined by the Condominium Documents referenced in Section 2.7 of the MDA, except to the extent any of the foregoing arise out of the negligence or willful misconduct of City or Authority or their respective agents, employees or contractors.

8. Assignment and Leasing

(a) Developer may not assign this Agreement, in whole or in part, or lease all or any part of the Maximum Allocated Amount of parking provided in the Garage for Hotel guests, except to a purchaser of the Hotel in the event of a sale thereof or to an Affiliate of Developer. For purposes hereof, "Affiliate" shall mean as to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control with such person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a person means the possession, directly or indirectly, of the power to vote more than 50% of the voting stock or membership interests of such person or to direct or cause the direction of the management and policies of such person, whether through the ownership of voting stock or membership interests, or by contract or otherwise.

(b) In the event Authority conveys the Garage to City, Authority shall assign this Agreement to City, and upon such assignment and the assumption by City of Authority's obligations under this Agreement, Authority shall be released from all liability and responsibility hereunder and Developer shall attorn to City pursuant to this Agreement.

9. Notices

All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

To Authority:

Norfolk Redevelopment & Housing Authority
201 Granby Street
Norfolk, Virginia 23510
Attn: Shurl Montgomery
Executive Director

and with a copy to:

Crenshaw, Ware & Martin
1200 Bank Of America Center
Norfolk, Virginia 23510

Attn: Howard W. Martin, Jr. Esquire

and with a copy to:

City Attorney
900 City Hall
810 Union Street
Norfolk, VA 23510

To Developer:
Norfolk Hotel Alliance, LLC
c/o LTD Management Co.
1564 Crossways Boulevard
Chesapeake, Virginia 23320
Attention: Malay Thakkar

With a copy to:

Faggert & Frieden, P.C.
222 Central Park Avenue, Suite 1300
Virginia Beach, VA 23462
Attention: Alan M. Frieden, Esq.

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

10. Entire Agreement

This Agreement, together with the agreements to be entered into pursuant to paragraph 11, constitute the entire agreement between the parties hereto with respect to the Garage, the Conference Center and the Hotel and supersede all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by Authority and Developer.

11. Other Agreements

In addition to the MDA and this Agreement, Developer or an affiliate of Developer and City and/or the Authority are entering into the following related agreements of even date:

(a) The Operating Agreement pursuant to which Developer will manage, operate and maintain the Conference Center for City;

(b) The Grant Agreement pursuant to which Authority will make grant payments subject to its terms; and

(c) The Mortgagee Protection Agreement, to be executed by Authority and City for the benefit of Developer and mortgagees.

The MDA and the agreements specified in subparagraphs (a)-(c) above shall be hereinafter referred to collectively as the "Other Agreements".

12. Miscellaneous

(a) The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns who shall be only those persons to whom the MDA is permitted to be assigned in accordance with the terms and conditions of such agreement. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

(b) In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

(c) This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the Commonwealth of Virginia.

(d) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY

By: _____ [SEAL]

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of _____, in the State of _____, whose term of office expires on the ____ day of _____, 200__, do hereby certify that _____, the Executive Director of Norfolk Redevelopment and Housing Authority, whose name is signed to the foregoing instrument dated _____, 2008 has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2008.

_____ [SEAL]

Notary Public

Registration Number: _____

NORFOLK HOTEL ALLIANCE, LLC

By: _____ [SEAL]

Name: _____

Title: _____

STATE OF _____
CITY OF _____ to-wit:

I, _____, a Notary Public in and for the City of _____, in the State of _____, whose term of office expires on the ____ day of _____, 200__, do hereby certify that _____, the Executive Director of NORFOLK HOTEL ALLIANCE, LLC, whose name is signed to the foregoing instrument dated _____, 2008 has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2008.

Notary Public [SEAL]

Registration Number: _____

EXHIBIT A
PROJECT SITE DESCRIPTION

Z:\Clients\6394\GARAGE PARKING AGREEMENT-CLEAN AMF 05.07.08.DOC

15.10 Entire Agreement. This Agreement, together with the agreements to be entered into pursuant to Section 15.11, constitutes the entire agreement between the parties hereto with respect to the Conference Center and the Hotel and supersedes all prior understandings and writings, and may be amended or modified only by a writing signed by Owner and Operator.

15.11 Other Agreements. In addition to this Agreement, Authority, City and Operator are entering or have previously entered into the following related agreements:

(a) The Master Development Agreement pursuant to which Operator is to provide certain development services for the Conference Center and commits to construct and open the Hotel;

(b) The Garage Parking Agreement pursuant to which parking will be made available to Operator for the use of the Hotel guests;

(c) The Condominium Instruments to be developed pursuant to Section 2.7 of the Master Development Agreement;

(d) The Mortgagee Protection Agreement, to be executed by Authority and City for the benefit of Operator and the Mortgagees.

15.12 Special Resolution Process. Where a matter is to be referred to a Special Resolution Process for determination, the following provisions shall apply to such process:

(A) Resolution of the matter or dispute being referred for resolution (the "Special Resolution Process") shall be the sole and exclusive remedy available to the parties with respect to such matter or dispute. Absent manifest error, the decision of the Expert, as hereinafter defined, shall be final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise. The failure of either party to adhere to the decision of the Expert shall constitute an event of default hereunder.

(B) The parties will observe in all respects, the terms and provisions of this Section 15.12 and any attempt to circumvent the terms shall be null and void. Upon the occurrence of a matter to be referred to the Expert (an "Expert Resolution Dispute"), either party may notify the other that a matter or dispute exists and in the event that the parties have been unable to resolve such matter or dispute within thirty (30) days, either party may give notice ("Expert Notice") to the other party of submission of such dispute to the Special Resolution Process set forth herein.

(C) For purposes of this Section 15.12, the term "Expert" shall mean an individual employed by an independent, nationally recognized conference center consulting firm who is qualified to resolve the issue in question, having at least ten (10) years experience in the subject matters in question. The Expert shall be appointed in each instance by agreement of the parties or, failing agreement, each party shall select one (1) such individual and the two (2) individuals so selected shall select another qualified individual to be the Expert. Each party agrees that it shall not appoint an individual as an Expert hereunder if the individual is, as of the date of appointment or within three (3) years prior to such date, employed by such party, either directly or as a consultant, in connection with any matter.

(D) In the event that either party calls for an Expert determination pursuant to the terms hereof, the parties shall have ten (10) days from the date of delivery of the Expert Notice to agree upon an Expert and, if they fail to agree, each party shall have an additional ten (10) days to make its respective selection of a qualified individual, and within ten (10) days of such respective selections, the two individuals so selected shall select another qualified individual to be the Expert. If either party fails to make its respective selection of a firm or individual within the ten (10) day period provided for above, then the other party's selection shall be the Expert. If the two (2) individuals so selected shall fail to select a third qualified individual to be the Expert, then such Expert shall be appointed by the American Arbitration Association.

(E) Each party shall be entitled to make written submissions to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission provided such submissions are made within thirty (30) days of selection of the Expert(s) (the "Submissions Period"). The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties. The cost of the Expert and the proceedings shall be borne as directed by the Expert unless otherwise provided for herein.

(F) The terms of engagement of the Expert shall include an obligation on the part of the Expert to: (i) notify the parties in writing of the Expert's decision within thirty (30) days after the expiration of the Submissions Period (or such other period as the parties may agree or as set forth herein); (ii) apply the standards applicable to conference centers in first-class hotels and in all events, consistent with the requirements of the Franchise Agreement; and (iii) apply strictly the applicable provisions of this Agreement.

(G) No party, or anyone acting on its behalf, shall have *ex parte* communications with any Expert concerning any matter of substance relating to the matter at issue.

15.13 Estoppel Certificates. Owner and Operator will, at any time and from time to time within fifteen (15) days of the request of the other party or a Mortgagee, execute, acknowledge and deliver to the other party and such Mortgagee, if any, an instrument certifying the following:

(a) That this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating such modifications);

(b) Whether there are any existing defaults by the other party to the knowledge of the party making such certification specifying the nature of such defaults, if any; and

(c) Such other matters as may be reasonably requested.

Any such certificate may be relied upon by any party to whom the certificate is directed.

15.14 Time of Essence. Time is of the essence of this Agreement.

15.15 Force Majeure. Neither party shall be liable for any failure to perform its nonmonetary obligations under this Agreement due to any cause beyond its reasonable control, such as war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, Acts of God, or any other cause or contingency similarly beyond its control.

15.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

15.17 Memorandum. A Memorandum of this Agreement in form reasonably satisfactory to Owner and Operator shall be recorded in the land records of the City of Norfolk, Virginia. Such Memorandum shall also be recorded in the chain of title to the Hotel and shall specifically state that Operator and its successors as the owner of the Hotel parcel shall be bound only by Section 6.2 of this Agreement. Owner will pay any recording taxes or fees required in connection with recording such Memorandum.

PRELIMINARY

GRANT AGREEMENT

THIS GRANT AGREEMENT is made as of the ____ day of ____, 2007, between the **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a duly organized and existing political subdivision of the Commonwealth of Virginia (the "Authority"), and ("Grantee").

WITNESSETH:

WHEREAS, in 2004, the Grantee approached the Authority and the City of Norfolk ("City") concerning the possibility of developing a hotel and restaurant ("Development") between Main Street and Plume Street, and the Selden Arcade and Concord Street.

WHEREAS, the Development has been found by the Authority and the City Council to constitute a significant economic development opportunity for the City, a positive factor in achieving the objectives of the Downtown West Conservation Project, and worthy of inducement, as set forth in the resolutions previously adopted by the Authority and actions taken by the City Council approving the terms herein; now, therefore,

WITNESSETH:

I. Definitions

The following italicized terms shall have the meanings set forth unless the context clearly requires otherwise:

1.1 The *Development* means the hotel, restaurant, conference center and garage to be constructed, equipped and operated by the Grantee and located between Main Street and Plume Street, and the Selden Arcade and Concord Street in the City of Norfolk.

1.2 *Year* means the calendar year beginning January 1 and ending December 31.

1.3 *Grantee's costs of development* means the costs borne by Grantee in designing, constructing and equipping the hotel and restaurant portion of the Development, including direct construction costs, the costs of architectural and engineering consultants, the costs of construction management fees (but only if such construction management fees are paid to a third party not related to Grantee), and the costs of equipment and fixtures necessary to the hotel and restaurant portion in connection with the completion of the Development, reduced by any and all contributions, payments or other consideration received from third parties (including the City and the Authority) on account of such construction. Grantee's costs of development for the hotel and restaurant portion shall not be less than [TBD] dollars (\$_____).

1.4 *Maximum aggregate amount of the Grant* means the maximum amount of money to be paid out over the term of the grant.

1.5 *Grant* means the sums to be transferred to the Grantee, as an inducement for the Grantee to complete the Development, pursuant to the terms of this Agreement.

1.6 *Hotel and Restaurant* means a hotel or restaurant of high quality, reputation and customer acceptance as approved by the City. In the case of the Hotel the parties recognize that the Hotel is defined as a full service Hilton hotel or Comparable Brand as defined in the Master Development Agreement by and among the Norfolk Redevelopment and Housing Authority, the City of Norfolk and RLJ-FULCO Norfolk, LLC, dated November 29, 2005, as amended.

II. The Grant

2.1 Amount of the Grant. Subject to the conditions and limits set forth below, the Authority will grant to Grantee a sum of money each year during the Grant Term, subject to annual appropriation and transfer of funds to the Authority by the City, predicated upon a performance-based formula resulting from the Development's implementation and operation.

The maximum aggregate amount of the Grant shall not exceed \$750,000. The annual grant payment shall be calculated as follows:

- A. 0.02% of all hotel gross receipts
- B. 0.04% of all restaurant gross receipts
- C. 0.42% of the increase in the value of tangible personal property
- D. 0.14% of the increase in the value of real estate

2.2 Term of the Grant. The term of the Grant shall commence upon completion and opening of the Development as evidenced by (a) final Certificates of Occupancy issued by the City and (b) satisfactory completion of final inspections under each permit issued by the City for the Development. The Grant payments shall commence at the end of the first year of occupancy and operation of the Development. The term of the Grant shall terminate upon the first to occur of (I) when the maximum aggregate amount of the Grant has been paid, or (II) ten (10) years after the end of the first year of occupancy and operation of the Development.

III. Conditions of the Grant

The obligation of the AUTHORITY to disburse the Grant is subject to the satisfaction of the conditions set forth below.

3.1 Conditions to Initial Disbursement. The initial disbursement of the Grant shall be subject to the satisfaction of the following conditions:

A. The Restaurant will be operating at regular opening hours for the public in general.

B. The Development has been completed and equipped at a cost for the hotel and restaurant portion of not less than \$_____, as evidenced by the occupancy permit and building permit issued by the City for such work and by such other evidence, certified as complete and accurate by the Development architect and Grantee, as the Authority may

reasonably request. Grantee shall furnish such documentation relating to such costs as may be required by the Authority to establish the amount of such Grantee's costs of completing the Development to the reasonable satisfaction of the Authority.

C. Reports of the hotel and restaurant gross receipts, and other relevant documents required by law to be filed with the Tax Commissioner of the Commonwealth of Virginia or the Commissioner of the Revenue of the City for the first full year of occupancy and for the year immediately preceding the completion of the Development, shall have been filed. These documents shall be provided to Authority, which shall then provide copies of such reports, documents and evidence to the City.

D. A final Certificate of Occupancy shall have been issued by the City for the Development, and the Development shall be fully operational and open for business.

E. The representations and warranties set forth below shall be true and correct in all material respects as of the date of this Agreement, and shall continue to be true and correct at the time of the proposed disbursement of the initial Grant payment.

F. The City Council of the City shall have appropriated funds for the Grant and delivered such funds to the Authority, and shall have made arrangements with the Authority for payment of the Authority's administrative expenses in administering the Grant.

G. The City shall have calculated in accordance with the provisions hereof and advised the Authority in writing of the amount of the initial disbursement, and shall have requested the Authority to pay the initial disbursement of the Grant.

H. The real estate tax assessment(s) for the Development for the succeeding tax year shall have been established and the Grantee shall have delivered to the real estate assessor all information reasonably requested by him or her to establish the real estate tax assessment for the property comprising the Development.

3.2 Conditions to Each Annual Grant Payment. Each disbursement of the Grant, including the initial disbursement, shall be subject to the satisfaction of the following conditions:

A. The Restaurant will be operating at regular opening hours and open to the public in general.

B. The conditions to the initial annual Grant payment shall have been satisfied.

C. Reports of gross receipts, business tangible property assessments, and real estate tax assessments required by law to be filed with the Tax Commissioner of the Commonwealth of Virginia or the Commissioner of Revenue of the City for the calendar year shall have been filed and copies delivered to the Authority. On or about May of each year, Grantee and the Authority shall meet and review the values of gross receipts, business tangible property assessments, and real estate tax assessments for the Development for the immediately

preceding calendar year. Within thirty (30) days thereafter, both parties shall have agreed upon final values for each of the gross receipts for the Development for the immediately preceding calendar year. Failing same, the value established by the City shall be employed in calculating the preceding calendar year's Grant. The gross receipts reported by Grantee shall be irrefutably presumed to be an accurate accounting thereof for purposes of the annual Grant payment.

D. The representations and warranties set forth below shall be true and correct as of the date of this Agreement, and shall continue to be true and correct at the time of the proposed disbursement of each year's Grant payment.

E. The City Council shall have appropriated funds for the Grant and delivered such funds to the Authority.

F. The City shall have calculated and advised the Authority in writing of the amount of the disbursement, and shall have requested the Authority to pay same.

IV. Representations and Warranties

GRANTEE represents and warrants to the Authority that:

4.1 Due Organization, Authority and Qualification. Grantee is a duly organized and validly existing limited liability company under the laws of the State of Delaware and has the power and authority to own its properties and other assets and to transact the business in which it is now engaged or proposes to engage. Grantee is qualified to do business in the Commonwealth of Virginia.

4.2 Taxes. Grantee has filed and shall file all tax returns which are required to be filed and has paid all taxes (including interest and penalties) which have become due pursuant to such returns or pursuant to any assessment or notice of tax claim or deficiency received by it. All tax liabilities were adequately provided for at the end of the most recent fiscal year of Grantee and are now so provided for on the books of Grantee. No material tax liability has been asserted by the Internal Revenue Service, the Commonwealth of Virginia, the City or any other taxing authority for taxes (or interest or penalties thereon) in excess of those already paid.

4.3 Compliance with Laws. Grantee and all of its assets and properties, including without limitation the Development, are and shall be in compliance in all material respects, to Grantee's knowledge, with all applicable requirements of law and all applicable rules and regulations of each Federal, state, municipal or other governmental department, agency or authority, domestic or foreign, including without limitation the Americans with Disabilities Act of 1990, the regulations promulgated thereunder, and all applicable environmental, land use and zoning laws and regulations.

V. General Matters

5.1 Authority Obligations Subject to Appropriation; Exculpation.

A. All obligations of the Authority hereunder for the disbursement of the Grant and any other payment of money are subject to and expressly conditioned upon funds being appropriated, calculated and approved for such purpose by the City Council, the amount of Grantee's grant payment being calculated and approved by the City, and the funds being delivered to the Authority, and shall not at any time constitute a legal obligation of the Authority for the disbursement of the Grant or the payment of money except to the extent so appropriated and delivered.

B. Neither the Commissioners of the Authority nor any person executing this Agreement shall be liable personally thereon by reason of the execution and delivery hereof. This Agreement is not, and shall not be deemed to constitute, a general obligation of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City, and neither the Commonwealth of Virginia nor any such political subdivision thereof shall be personally liable thereon, nor in any event shall this Agreement be payable out of funds or properties other than as set forth herein. This Agreement shall not constitute an indebtedness within the meaning of any municipal debt limitation or restriction.

C. No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future commissioner, officer, employee or agent of the Authority in his or her individual capacity, and no such commissioner, officer, employee or agent shall be subject to any liability under this Agreement or with respect to any other action taken by him or her.

5.2 Assignment. Grantee shall have the right to assign its rights under this Grant to any party, provided Grantee gives notice of such assignment to the Authority. After such notice is given, the Authority may deal exclusively with the assignee named in such notice.

5.3 Waiver. The failure of the Authority to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by the Authority of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and duly signed by the Authority.

5.4 Severability. If any clause or provision of this Agreement is or becomes illegal, invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, unless such invalidity would create undue hardship to the Authority, or is essential to its rights, in which event the Authority has the right to terminate this Agreement on written notice to Grantee.

5.5 Licenses and Permits. It shall be the ultimate responsibility of Grantee at its expense to secure all licenses and permits required to be obtained by it with respect to construction, improvement, completion and occupancy of the Development.

5.6 Applicable Law. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia.

5.7 Interpretation. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings or Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer.

5.8 Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To the Authority: Norfolk Redevelopment and Housing Authority
201 Granby Street
Norfolk, VA 23510
Attention: Shurl Montgomery, Executive Director

Copy to: Crenshaw, Ware and Martin, P.L.C.
1200 NationsBank Center
One Commercial Place
Norfolk, VA 23510-2111
Attention: Howard W. Martin, Jr.

To Grantee: RLJ-FULCO NORFOLK, LLC
3 Bethesda Metro Center
Suite 1000
Bethesda, Maryland 20814
Attention: Thomas J. Baltimore, Jr.

and

Fulco Development, LLC
500 E. Main Street, Suite 820
Norfolk, Virginia 23510
Attention: William Fuller

Copy to: Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339
Attention: Gerard Leval, Esquire

5.9 Non-Discriminatory Policies.

A. Grantee will not discriminate against any employee or applicant for employment because of the race, religion, color, sex or national origin of the employee or applicant for employment, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Grantee. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Grantee, in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state that Grantee is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

5.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Grant, supersedes all prior understandings and writings and may be amended or modified only by a writing signed by the Authority and Grantee.

WITNESS the following signatures, thereunto duly authorized:

**NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY**

Date of execution:

_____, 2006

By:

Name: _____

Title: _____

RLJ-FULCO, LLC

Date of execution:

_____, 2006

By:

Name: _____

Title: _____

APPROVED AS TO CONTENTS:

Executive Director, Norfolk Redevelopment
and Housing Authority

APPROVED AS TO FORM:

Counsel to the Norfolk Redevelopment
And Housing Authority

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2013, by and between the **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a duly organized and existing political subdivision of the Commonwealth of Virginia ("Authority"), and the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City").

WITNESSETH:

WHEREAS, under the leadership of the City Council, the City of Norfolk has embarked on a plan ("Plan") to revitalize downtown Norfolk in order to attract tourists, vacationers, conventioners and other visitors to the City; and

WHEREAS, both the City and the Authority desire to broaden and modernize the City's convention serving potential through the joint development of a new first class hotel by a private developer and the development of a first class conference center and a parking garage by the City and the Authority (collectively the "Project") within the boundaries of the Downtown South and West Redevelopment Project Areas as shown in **Exhibit A**; and

WHEREAS, negotiations with Professional Hospitality Resources, Inc., ("Developer"), have produced an agreement to arrange for the construction, furnishing and equipping of a first class conference center ("Conference Center"), a parking garage ("Garage") and a first class Hotel ("Hotel") with approximately 300 rooms, all in accordance with a Master Development Agreement as set forth in **Exhibit B**; and

WHEREAS, the City contemplates conveying to the Authority the Property on which the City shall construct or cause to be constructed the Conference Center and the Garage (the Conference Center and Garage being sometimes referred to herein as the "Public Facilities") and Developer shall construct or cause to be constructed the Hotel; and

WHEREAS, Developer will acquire the air rights from the Authority for the Hotel site; and

WHEREAS, following construction, the Conference Center will be operated by Developer pursuant to an Operating Agreement attached hereto as **Exhibit C**; and

WHEREAS, Developer has agreed to operate the Conference Center in a professional manner and in accordance with the terms and conditions of the Operating Agreement; and

WHEREAS, in recognition of the fact that the Hotel, the Garage and the Conference Center, though separately owned, will be physically joined thereby creating certain access, utility, structural support and other easements and creating the need for fairly allocating costs associated with operating, maintaining, repairing or replacing any portion thereof, Developer and the Authority have prepared Condominium Documents as set forth in **Exhibit D**; and

WHEREAS, to provide adequate parking for guests of the Hotel and Conference Center, the City and Developer have entered into the Parking Agreement set forth in **Exhibit E**; and

WHEREAS, in accordance with its authority to assist redevelopment, at the City's request the Authority has agreed to provide grants to Developer pursuant to a Grant Agreement attached hereto as **Exhibit F**; and

WHEREAS, the City intends to issue municipal bonds in order to raise funds for the purpose of constructing, furnishing and equipping the Conference Center and the Garage and is providing funds to the Authority to enable it to carry out its public purpose including the performance of the Authority's obligations to Developer under the agreements hereto attached as exhibits B, C, D, E and F (the "Project Documents"); and

WHEREAS, on -----, the Council of the City adopted an ordinance approving the preparation and execution of this Agreement, authorizing the execution and delivery thereof on behalf of the City, and authorizing the performance of all obligations undertaken by the City under this Agreement and the Project Documents; and

WHEREAS, on -----, the Board of Commissioners of the Authority approved this Agreement, authorizing the execution and delivery thereof on behalf of the Authority, and authorizing the performance of all obligations undertaken by the Authority under this Agreement and the Project Documents;

NOW, THEREFORE, in consideration of the public benefits to accrue to the City and its citizens from the undertaking and carrying out of this Project and of the mutual covenants hereinafter set forth, the Authority and the City agree as follows:

1. **PARTIES TO PERFORM THEIR OBLIGATIONS.** The Authority and the City agree to take all actions reasonably necessary to perform the duties and

obligations incumbent on them as set out herein or in the Project Documents in order to assure the timely commencement and completion of the Conference Center, the Hotel and Garage and all related improvements. The Agreement between the Authority and the City in connection with such matters includes, but is not limited to, the specific agreements, actions, and undertakings set forth in this Agreement, the Project Documents and those matters necessary and incidental thereto. The Authority's performance with respect to the Project is dependent upon its receipt of City funding in an amount sufficient to enable it to carry out its obligations under the Project Documents.

2. **CITY TO PROVIDE FUNDS TO AUTHORITY.** The City agrees to take all actions reasonably necessary, including the issuance of municipal bonds, to raise, grant and deliver to the Authority sufficient funds to administer its obligations hereunder, and to satisfy the Authority's financial obligations as specifically set forth in the Project Documents. Specifically, the City agrees to deliver sufficient funds to the Authority at the times and in the amounts necessary to enable the Authority to fulfill all of its obligations under the Project Documents in a timely fashion.

3. **CONVEYANCE OF PROPERTY.** The City agrees to convey the Property to the Authority in fee simple absolute.

4. **AGENT OF AUTHORITY.** To the extent that City (i) has expressly agreed by the terms of this Agreement to review budgets and plans, grant approvals and perform other services in furtherance of the design and construction of the Public Facilities, or (ii) upon the request of Authority, agrees to provide services or assistance to Authority in furtherance of the design and construction of the Public Facilities that City

is not required by the Project Documents to provide, the relationship of City to Authority shall be that of Authority's agent.

5. **INDEMNIFICATION**. The City hereby agrees to indemnify and hold the Authority harmless and shall defend Authority from and against any and all loss, liability, cost, damage, expense, claim, action, proceeding or judgment incurred or suffered by Authority (i) in connection with the Project, or (ii) arising out of the Project Documents, including all of the Authority's financial obligations thereunder, or (iii) arising out of or in connection with the construction of the Public Facilities or the selection of the architects or construction companies therefor, or (iv) by reason of any act or omission of City (and City's agents or employees) performed by virtue of the agency created in Section 4 or the activities of the City under Section 7 of this Agreement, or (v) incurred or suffered by the Authority in connection with the enforcement of this Agreement or the Project Documents. Specifically, and without limiting the foregoing sentence, the City agrees to indemnify, defend and hold harmless the Authority in the event that the Developer or a third party makes a claim or files suit against the Authority in connection with the Project or arising from the Project Documents.

6. **AUTHORITY TO PERFORM ITS OBLIGATIONS**. With regard to the rights, duties and obligations of the Authority under the Project Documents, the Authority agrees to fully enforce its rights under the Project Documents, and, subject to Sections 1 and 2 hereof, to faithfully perform its duties and obligations thereunder and to keep the City periodically and fully informed as to its activities.

7. **CONSTRUCTION OF THE PUBLIC FACILITIES**. The City and Authority agree to execute documents contemplated hereby and enter into such other

agreements as are reasonably necessary to accomplish the purposes included herein.

8. **PROVISION OF PERSONNEL AND MATERIAL.** The Authority and the City collectively and cooperatively shall provide or cause to be provided all personnel, consulting services, equipment and materials reasonably necessary to fulfill their obligations and exercise their rights under the Project Documents and any related agreements.

9. **REPORTS TO CITY.** The Authority shall provide to the City, in form and substance and on a schedule acceptable to the City, reports on expenditures and progress with respect to undertaking and carrying out the responsibilities of the Authority hereunder and shall provide to the City copies of all plans, studies, contracts and agreements in its possession related to such development.

10. **NO DISCRIMINATION.** The Authority and the City agree not to discriminate, in carrying out this Agreement, against any religion, sex, age or national origin and agree to take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to employment, promotion, demotion, termination, rates of pay, other compensation and selection for training including apprenticeship.

11. **SUBCONTRACTING.** The Authority and the City may subcontract without one another's prior approval for services essential to undertaking and carrying out their respective responsibilities under this Agreement and the Project Documents. Either party so doing shall be responsible to the other for the actions or omissions of its subcontractors, and of persons either directly or indirectly employed by them and for the

acts and omissions of persons directly employed by it, and at the time such subcontracting shall provide such bonds or insurance coverage as may be provided for in the Project Documents or otherwise agreed upon by the parties.

12. **COOPERATIVE USE OF PERSONNEL.** The City and the Authority agree to make their respective personnel available to either party in such manner as may be mutually determined to be in the best interest of furthering expeditious and effective completion of the entire Project.

13. **APPLICABLE LAW.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia.

14. **NOTICES.** All notices, certificates, requests or other communications under this Cooperation Agreement must be in writing and will be deemed given when mailed by registered or certified mail, return receipt requested, to the addresses set forth below:

If to the Authority:

Norfolk Redevelopment and Housing Authority
201 Granby Street
Norfolk, VA 23510
Attention: Shurl Montgomery

With a copy to:

Crenshaw, Ware & Martin
150 W. Main Street, Suite 1500
Norfolk, Virginia 23510
Attention: Delphine G. Carnes, Esquire

If to City:

City of Norfolk, Virginia
Attention: City Manager

City Manager's Office
1100 City Hall Building
810 Union Street
Norfolk, VA 23510

With a copy to:
City Attorney
900 City Hall Building
810 Union Street
Norfolk, VA 23510

The parties may, by notice given pursuant to the provisions of this Section, designate such other addresses as they may desire for the receipt of notices under this Cooperation Agreement.

15. **BINDING ON SUCCESSORS IN INTEREST.** This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

16. **THIRD PARTY BENEFICIARIES.** It is understood between the parties that Developer but no others have third party rights created by this Agreement.

17. **LIMITED LIABILITY OF AUTHORITY.** It is the intent of the parties that this Agreement and the Project Documents shall not impose upon the Authority any responsibility, financial or otherwise, other than that which is expressly set forth herein .

18. **SEVERABILITY OF INVALID PROVISIONS.** If any clause, provision or section of this Cooperation Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses,

provisions or sections, and this Cooperation Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained herein.

19. **COUNTERPARTS**. This Cooperation Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, will be an original, and the counterparts taken together will constitute one and the same instrument.

20. **AMENDMENTS**. This Cooperation Agreement may be amended only by written agreement of the parties.

21. **TERM**. This Cooperation Agreement shall be effective from the date of its execution and delivery by the City and the Authority and will terminate only after the Authority is no longer obligated to make payments under the Project Documents and the Project contemplated under the Master Development Agreement has been completed.

22. **WAIVER**. Any waiver by any party of its rights under this Cooperation Agreement must be in writing, and shall not be deemed a waiver with respect to any matter not specifically covered therein.

CITY OF NORFOLK

By _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO CONTENTS:

Director, Dept. of Development

APPROVED AS TO FORM AND CORRECTNESS:

Assistant City Attorney

NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY

By _____
Executive Director

ATTEST:

Assistant Secretary

APPROVED AS TO FORM:

Counsel for the Authority